88-1085

Supreme Court, U.S.
FILED
27 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

ESTATE OF ANDERSON WILLIS,
DECEASED, ET AL.,
Petitioners,

v.

ESTATE OF JOHN RILEY, DECEASED, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

HILL HICKS COLLINS
Attorneys and Counselors at Law
DONALD W. HILL
DONALD W. HICKS, SR.
One Main Place
1201 Main Street, Suite 1530
Dallas, Texas 75250
(214) 744-0255

and

LAW OFFICES OF CRAIG WASHINGTON
HONORABLE CRAIG WASHINGTON, ESQ.
SIDNEY BRAQUET, ESQ.
1000 The Houston Building
2323 Caroline Street
Houston, Texas 77004-1081
(713) 659-9090

Attorneys for Petitioners

Alpha Law Brief Co., Inc. — 8748 Westpark — Houston, Texas 77063 — 789-2000

QUESTIONS PRESENTED

I.

WHETHER THE APPEALS COURT ABUSED ITS DISCRETION IN AFFIRMING THE TRIAL COURT'S GRANTING OF DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT IN AS MUCH AS A JURY COULD REASONABLY FIND OR INFER THAT THE PLAINTIFFS AND THEIR ANCESTORS DID NOT OR COULD NOT HAVE KNOWN OF THE PARTICULAR CAUSES OF ACTION ALLEGED IN THEIR FIRST AMENDED COMPLAINT OVER TWO YEARS PRIOR TO THE DATE THIS CIVIL ACTION WAS FILED, JUNE 19, 1984.

A. WHETHER A JURY COULD FIND OR INFER THAT FREESTONE COUNTY, TEXAS MAINTAINED A *DE JURE,* AND *DE FACTO* SYSTEM OF TWO SOCIETIES, ONE WHITE AND ONE BLACK, RELATIVE TO LAND OWNERSHIP, HOLDINGS AND/OR INHERITANCE WITH THE INTENDED EFFECT OF CREATING A SELF-SEALING, SELF-EXECUTING AND SELF-CONCEALING SYSTEM OF LAND DIVESTMENT AS FAR AS BLACK PLAINTIFFS WERE CONCERNED AND THAT SUCH A SYSTEM CAUSED THE COMPLAINED OF INJURIES TO BE INHERENTLY UNKNOWABLE BY SAID BLACK PLAINTIFFS UNTIL SOMETIME IN 1984.

B. WHETHER A JURY COULD REASONABLY FIND OR INFER THAT CRITICAL FACTS NECESSARY TO MAINTAIN THIS CIVIL ACTION WERE FRAUDULENTLY CONCEALED UNTIL SOMETIME IN 1984 BY THE FOREGOING SELF-SEALING,

SELF-EXECUTING, SELF-CONCEALING SYSTEM OF TWO SOCIETIES AND RELATIVE TO LAND OWNERSHIP, HOLDINGS, AND INHERITANCE.

C. WHETHER A JURY COULD REASONABLY FIND AND INFER FROM THE FACTS, CIRCUMSTANCES AND CONDITIONS ALLEGED IN THE FIRST AMENDED COMPLAINT, THAT PLAINTIFFS EXERCISED REASONABLE DILIGENCE IN DISCOVERING THEIR RIGHTS OF ACTION ASSERTED IN THIS CIVIL ACTION.

D. WHETHER A JURY COULD REASONABLY FIND OR INFER THAT PLAINTIFFS WOULD NOT HAVE BEEN ABLE TO DISCOVER ADEQUATE GROUNDS DURING 1870, 1904 AND OTHER CRITICAL PERIODS OF THE LAND LOSS AS ALLEGED IN PLAINTIFFS' FIRST AMENDED COMPLAINT AND AS DETERMINED BY THE DISTRICT COURT.

E. WHETHER A JURY COULD FIND OR INFER THAT PLAINTIFFS WOULD NOT HAVE HAD AN EQUAL OPPORTUNITY TO SUSTAIN THIS CIVIL ACTION DURING THE 1870'S, 1904, AND UP TO AND INCLUDING, JUNE 19, 1984.

II.

WHETHER THE APPEALS COURT ABUSED ITS DISCRETION AFFIRMING THE TRIAL COURT'S GRANTING OF DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT IN AS MUCH AS A JURY COULD REASONABLY FIND OR INFER THAT THE PLAINTIFFS DID NOT HAVE THE SAME RIGHTS AS WAS ENJOYED BY WHITE FREESTONE COUNTY CITIZENS TO INHERIT, PURCHASE, SALE,

HOLD AND CONVEY REAL AND PERSONAL PROPERTY AND THAT THE REASON FOR SUCH DIFFERENCE WAS *DE JURE* AND *DE FACTO* RACE CLASSIFICATIONS IMPOSED BY COUNTY DEFENDANT AND PARTICIPATED IN BY THE FATHERS AND GRANDFATHERS OF INDIVIDUAL PLAINTIFFS DEFENDANTS AND THAT SUCH CONDITION SUFFERED BY BLACK PLAINTIFFS MADE IT IMPOSSIBLE FOR BLACK PLAINTIFFS TO KNOW OR REASONABLY KNOW OF OR HAVE ARTICULATED THEIR COMPLAINED OF INJURIES PRIOR TO 1984.

III.

WHETHER IN ANY EVENT, THE APPEALS COURT ABUSED ITS DISCRETION IN AFFIRMING THE TRIAL COURT'S RULING WHICH DID NOT EXEMPT FROM THE TRIAL COURT'S SUMMARY JUDGMENT AND DISMISSAL ORDER THE BLACK PLAINTIFFS' HISTORICAL FAMILY BURIAL GROUND. PLAINTIFFS ALLEGED THAT FREESTONE COUNTY, TEXAS HAD A PATTERN, PRACTICE AND/OR POLICY OF ESTABLISHING *DE JURE* AND *DE FACTO* LAWS, CODES, CUSTOMS AND TRADITIONS THAT HAD THE SPECIFIC INTENT TO ADVERSELY IMPACT BLACK PLAINTIFFS' ABILITY TO OWN, HOLD AND INHERIT LAND AND THE DISCRIMINATORY EFFECT OF THE FOREGOING SYSTEM ALLEGED BY PLAINTIFFS WAS REASONABLY FORESEEABLE TO FREESTONE COUNTY, TEXAS AND WHITE SOCIETY WHEN IMPOSED. THIS SORT OF ACTIVITY SHOULD NOT BE IMPOSED AGAINST BLACK

PLAINTIFFS TO DIVEST THEM OF THEIR BURIAL GROUNDS AS IT REWARDS TOO MUCH, THE RACIAL DISTINCTIONS IN OWNING, HOLDING OR INHERITING LAND TO THE POINT OF BEING INCONSISTENT WITH FEDERAL POLICY. THE APPEALS COURT ABUSED ITS DISCRETION IN AFFIRMING THE TRIAL COURT'S GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT IN AS MUCH AS A JURY REASONABLY COULD FIND AND INFER FREESTONE COUNTY'S MAINTENANCE AND ENFORCEMENT OF SUCH PATTERNS, PRACTICES AND POLICIES.

IV.

WHETHER THE APPEALS COURT ABUSED ITS DISCRETION IN AFFIRMING THE TRIAL COURT IN THAT A JURY CAN REASONABLY FIND AND INFER THAT THE PREJUDICE TO DEFENDANTS, IF ANY, IN BRINGING PLAINTIFFS' CLAIMS IN 1984, CANNOT BE ATTRIBUTED IN ANY WAY TO PLAINTIFFS.

V.

WHETHER THE APPEALS COURT ABUSED ITS DISCRETION IN AFFIRMING THE JUDGMENT OF THE TRIAL COURT SINCE A JURY REASONABLY COULD FIND OR INFER THAT THE ALLEGED FRAUDULENT DIVESTMENT SCHEMES PRACTICED AGAINST BLACK PLAINTIFFS BY PRIVATE AND PUBLIC PERSONS AND WHITE HATE GROUPS COUPLED WITH THE INTENTIONAL LACK OF PROTECTION AND THE ENCOURAGEMENT, ENHANCEMENT AND ENFORCEMENT OF

SAID SCHEMES BY THE FREESTONE COUNTY GOVERNMENT HAD THE OPERATIVE EFFECT OF CONCEALING THE CIVIL ACTIONS ALLEGED IN PLAINTIFFS' FIRST AMENDED COMPLAINT UNTIL JUNE 19, 1984.

VI.

WHETHER THE APPEALS COURT ABUSED ITS DISCRETION IN SUSTAINING THE TRIAL COURT'S OPINION SINCE THE TRIAL COURT'S FINDING THAT PLAINTIFFS ADMITTED THAT THE FRAUDULENT CONCEALMENT OF THE PARTICULAR CLAIMS IN APPELLANTS COMPLAINT ENDED IN 1968 WAS CLEARLY AN ABUSE OF DISCRETION, RESULTED IN AN ERRONEOUS FACT FINDING AND USURPED THE PROVINCE OF A JURY WHICH REASONABLY COULD HAVE FOUND OR INFERRED FROM THE FACTS, CIRCUMSTANCES AND CONDITIONS ALLEGED AND SUPPORTED BY EVIDENCE THAT THE FRAUDULENT CONCEALMENT IN FACT PROCEEDED UP TO AND INCLUDE THE EARLY PART OF 1984.

VII.

WHETHER THE APPEALS COURT ABUSED ITS DISCRETION BY SUSTAINING THE TRIAL COURT WHICH MADE A CLEARLY ERRONEOUS FINDING OF FACT THAT NO SPECIFIC DEFENDANTS WERE NAMED AS WRONGDOERS IN THIS CIVIL ACTION INASMUCH AS THE FIRST AMENDED COMPLAINT ALONG WITH ABSTRACTS, ARCHIVAL AND OTHER DOCUMENTS CLEARLY SHOW-

ED DEFENDANTS AND/OR THEIR FATHERS AND/OR GRANDFATHERS AND/OR PREDECESSORS-IN-INTEREST, TITLE OR OFFICE ARE CLEARLY AND SPECIFICALLY IDENTIFIED AS TO THEIR ROLE IN THE COMPLAINED OF DIVESTMENT AND AS TO THEIR RELATIONSHIP TO ORIGINAL WRONGDOERS.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	1
OPINIONS BELOW	2
GROUNDS FOR JURISDICTION	3
STATUTES, RULES AND CONSTITUTIONAL PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	12
1. THE QUESTION IS SUBSTANTIAL	15
2. THE DECISION BELOW IS INCORRECT	15
CONCLUSION	22
APPENDIX A —	
September 28, 1988 Per Curiam Denial On Petition For Rehearing	1a
Judgment Of The United States Court Of Appeals For The Fifth Circuit, Filed August 25, 1988	2a
Opinion Of The United States Court Of Appeals For The Fifth Circuit, Dated August 25, 1988	4a
Memorandum Opinion And Order For The United States District Court, Dated August 7, 1987	8a
APPENDIX B —	
Appellants Petition For Panel Rehearing Filed September 8, 1988	20a
Notice Of Appeal Filed August 28, 1987	24a
APPENDIX C —	
Plaintiffs' Response To Defendants' Motion For Summary Judgment, Filed June 15, 1987	25a
APPENDIX D —	
Plaintiffs' Supplemental Response To Defendants' Rule 12(b) Motions And Motion(s) For Sanctions Under Rule 8(a), Filed May 18, 1987	39a

Page

APPENDIX E —

Plaintiffs' Response To Show Cause Order, Filed October 6, 1986 ..... 77a

APPENDIX F —

Plaintiffs' First Amended Complaint, Filed March 2, 1987 82a

APPENDIX G —

United States Constitution, Amendment 13 ..... 144a

United States Constitution, Amendment 14 ..... 144a

42 U.S.C. Sec. 1981 ..... 145a

42 U.S.C. Sec. 1982 ..... 145a

42 U.S.C. Sec. 1983 ..... 145a

42 U.S.C. Sec. 1985(3) 146a

42 U.S.C. Sec. 1986 ..... 147a

42 U.S.C. Sec. 1988 ..... 148a

TABLE OF AUTHORITIES

CASES	Page
Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970)	20
Allen v. McCurry, 449 U.S. 90 (1980)	16
Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505 (1986)	15, 16, 19, 20
Burnett v. Grahan, 104 S. Ct. 2924 (1984)	16
Casey Enterprises v. American Hardware Mutual Insurance Co., 655 F.2d 598 (5th Cir. 1981)	16
Clemons v. Dougherty County, Georgia, 684 F.2d 1365 (1982)	16
Cross v. Lucious, 713 F.2d 153 (5th Cir. 1983)	12, 20
First National Bank of Arizona v. City Service Co., 391 U.S. 253 (1968)	20
Golden v. Biscayne Bay Yacht Club, 530 F.2d 16 (5th Cir. 1976), *cert. denied*, 429 U.S. 872 (1976)	17
Gordon v. City of Cartersville, 522 F. Supp. 753 (N.D. Ga. 1981)	18
Harvey v. The Great Atlantic and Pacific Tea Company, Inc., 388 F.2d 123 (5th Cir. 1968)	19
Hohri v. United States, _____U.S._____, 107 S. Ct. 2246, 96 L.Ed.2d 51 (1987)	14
Howard v. Roadway Express, Inc., 726 F.2d 1529 (11th Cir. 1984)	19
Impossible Electronics v. Wackenhut Protective Systems, Inc., 669 F.2d 1026 (5th Cir. 1982)	16
Jafree v. Barber, 689 F.2d 640 (7th Cir. 1982)	18
Jones v. Preuit & Mauldin, 763 F.2d 1250 (11th Cir. 1985), *rehearing denied*, 772 F.2d 918 (11th Cir. 1985)	17
McNeese v. Board of Ed. for Community Unit School Dist. 187, Cahokia, Ill., 373 U.S. 668 (1963)	16
Monell v. New York City Department of Social Services, 436 U.S. 658 (1978)	6
Scheuer v. Rhodes, 416 U.S. 232 (1974)	15
Taylor v. Jones, 653 F.2d 1193 (8th Cir. 1981)	17
United States v. Kubrick, 444 U.S. 111 (1979)	7, 15
Vaughn v. Pool Offshore Co., a Div. of Pool Co. of Texas, 683 F.2d 922 (5th Cir. 1982)	18
Vietnamese Fishermen's Ass'n v. Knights of Klu Klux Klan, 518 F. Supp. 993 (S.D. Tex. 1981)	18

CONSTITUTION

Page

United States Constitution, Amend. 13 & 14 ..... 4, 13, 16

STATUTES

42 U.S.C. Sec. 1981 .....4, 5, 13, 18
42 U.S.C. Sec. 1982 ..... 4, 5, 13
42 U.S.C. Sec. 1983 ..... 4, 5, 17
42 U.S.C. Sec. 1985 ..... 4, 5
42 U.S.C. Sec. 1986 ..... 4, 5
42 U.S.C. Sec. 1988 ..... 4, 5

FEDERAL RULES OF CIVIL PROCEDURE

Rule 12(b) 4, 19, 20
Rule 56 ..... 4, 19

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

ESTATE OF ANDERSON WILLIS,
DECEASED, ET AL.,
Petitioners,

v.

ESTATE OF JOHN RILEY, DECEASED, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Your Petitioners[1] respectfully pray that a Writ of Certiorari issue to review the unpublished opinion and judgment and September 28, 1988 denial of rehearing of the United States Court of Appeals for the Fifth Circuit, entered in the above cause.

1. Petitioners herein are the ESTATE OF ANDERSON WILLIS, DECEASED; CHAVOUS WILLIS, COLBERT WILLIS, ANNIE LAURA PHILPOTT, DONNIE RAY JONES, DOROTHY MARIE JONES BOLTS, RUBY JEAN JONES HILMON, WARD ALEXANDER JONES, LELA MAE JONES MITCHELL, LOREE JONES ELLISON, ANNIE DELORES JONES, TRACY LEE JONES ROSTON, MARY ELIZA JONES PORTILLO, ROBERTA CORNISH MIMS, MABEL CORNISH SALLIE, SARAH ANN CORNISH TRAYLOR, CICERO BURNS, EDDIE MAE BURNS, J. C. COX, JOSHUA COX, DOROTHY LEE COX MAYS, PEARLENE DICKENS, THEODORE WILLIS, JR., LAURA WILLIS, CLIFTON WILLIS, MARGRET NELL WILLIS, LURAINER WILLIS, CORA BROWN LAWSON, KALIP BROWN, B. C.

OPINIONS BELOW

The unpublished opinion and judgment of the United States Court of Appeals for the Fifth Circuit were each filed August 25, 1988. Petitioners filed a petition for panel rehearing (Appendix B) which was denied per curiam on September 28, 1988 (Appendix A). Copies of the Appeals Court's August 29, 1988 opinion and judgment are included in Appendix A, together with a copy of the Trial Court's Memorandum Opinion and Order filed August 7, 1987.

BROWN, PHELIA BANKS, NOLA MAE EDWARDS, DARLINNETTIA HAYES, PERRY HAYES, SETH HAYES, YVONNE EDWARDS NORRIS, NEAL B. T. EDWARDS, JR., DORIS DAVIS (EDWARDS), VIRGINIA WOODARD JOHNSON, BILLY EUGENE WOODARD, DIANE WOODARD DAVIS, EBERTINE HUCKABY WILLIS, ISSOM WILLIS, SR., ROBERTA CORNISH, MABEL CORNISH, SARAH ANN CORNISH, LOUISE RAY, HAZEL BROWN, MANUEL HENRY, LOWE HENRY, JR., SEDRICK HENRY, NOVELLA AUGUSTINE, HATTIE FAY AUGUSTINE, H. W. HENRY (HORACE), CORNELLA CLARK, EUNIA DENNIS, SAMMIE CLARK, ENUIA DENNIS HENRY, ESTHER HENRY, JOHN HENRY, JR., IRENE HENRY, CLEO HENRY, CARRIE B. HENRY, SARAH HENRY, JAMES HENRY, BERTHA HOWARD, LEWIS SCOTT, ROSEMARY SCOTT HENRY, EULA ROBERTS, BERNICE HENRY, NORMA JEAN HENRY, EARNIE MAE HENRY, JESSIE HENRY, LELAND HENRY, JEAN ETHEL HENRY, NAOMIA GERTRUDE WILLIS BECK, LOIS WILLIS GILLESPIE, W. B. WILLIS, MILDRED OLENE WILLIS WILLIAMS, LORISA LYNETTE WILLIS FULLER, NELSON THAD WILLIS, MABLE ORA WILLIS, ROY WILLIS, JR., MABLE ANNETTE WILLIS YARBOROUGH, THEA EDWARD WILLIS, HAZEL B. PERRY WILLIS, MINNIE R. OWNES, OPHELIA WOODARD, TURMAN BURNS, MELVIN BURNS, MARY McCUTCHESON, FLOYD R. BURNS, SHIRLEY BURNS, CAROLYN SMITH, RAY C. BURNS, DORIS LINDSEY, RAY CARL BURNS, ROSE MARY CARLWELL, PAUL LINDSEY, BOBBY J. HENDERSON, CLIFTON D. HENDERSON, EDNA E. MOORE, WILLIAM HENDERSON, BYRD WILLIS, ROXIE WILLIS MOSS, NED MALONE, CLARENE ROUSOW, HATTIE GREEN, MINNIE OLA WILLIS CUNNINGHAM, ROXIE L. SEPHUS, ANNIE L. ROSS, CLARENCE CUNNINGHAM, LOUISE D. RICHARD,

GROUNDS OF JURISDICTION

The Judgment sought to be reversed was entered by the United States Court of Appeals for the Fifth Circuit on August 25, 1988, affirming the District Court's judgment in all respects. Petitioners timely petition for panel rehearing was denied on September 28, 1988, and this Petition for Certiorari was filed within ninety days of that date.

This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

AMMER REE MOTT, ATHEL GENE CUNNINGHAM, LUTHER RAY CUNNINGHAM, MACK AUTHOR CUNNINGHAM, WREN WILLIS, IDA S. WILLIS, ELGIN WILLIS, MARIE WILLIS, LYNIA MAE WILLIS, J. T. WILLIS, CATHERINE BANKS, DOROTHY LANE, EARLIE MAE MOSLEY, BERLAUNDER LOISE HUDSON, JAMES VANCE FULLER, WILLIE JAMES FULLER, LEROY B. WILLIAMS, TRACY WILLIS, BY AND THROUGH HIS WIFE AND ATTORNEY-IN-FACT, LULA WILLIS, K. C. WILLIS, CREASIE WILLIS BAUMAN, GLADYS WILLIS HARRIS, BILL WILLIS, JEANETTE WILLIS ADKINS, PAUL WILLIS, SILAS LEE WILLIS, LORIANNE WILLIS WATSON, WYOMIA WILLIS JONES, KITTIE JAMES FERGUSON, PRESTON JONES, HAZEL JONES BANKS, WANDA JONES BAILEY, BOBBY JONES, BETTIE JONES WOODARD, WARREN JONES, JR., ERNEST JONES, PATSY JONES DAWKINS, TRACY JONES, LESLIE JONES, LISA JONES, DONNIE RAY JONES, DOROTHY MARIE JONES BOLTS, RUBY JEAN JONES HILMON, WARD ALEXANDER JONES, LELA MAE JONES MITCHELL, LOREE JONES ELLISON, ANNIE DELORES JONES, TRACY LEE JONES ROSTON, MARY ELIZA JONES MITCHELL, LOREE JONES ELLISON, ANNIE DELORES JONES, TRACY LEE JONES, HOUSTON JONES, ROGER LANE, MIKE EARL LANE, KALIP BROWN, MACK EARL LANE, RILEY LANE, R. L. LANE, WILLIS LANE, LUCILLE TERRELL, ELIZABETH SALMON, B. C. BROWN, ERVIN WILLIS, DECEASED, JESSIE WILLIS, CORA B. LAWSON, CLADY WILLIS, J. C. COX, JOSHUA COX, DOROTHY LEE COX MAYS, EMMRENER RONSON, HUBERT RONSON, MAYRE RONSON CHAPELL, BOBBY LEE RONSON, SMITH RONSON, JR., MAGGIE LEE RONSON, WILLIE EARL RONSON, JOYCE MARIE RONSON DAVIS, WILLIAM RAY RON-

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amendments 13 and 14

42 U.S.C. Sec. 1981, 1982, 1983, 1985, 1988

FED. R. CIV. PRO. 56

FED. R. CIV. PRO. 12(b)

These Statutes, Rules and Constitutional provisions are set forth in Appendix G.

SON, MARY ELLEN RONSON, LINDA LUCILLE RONSON, RODNEY DWAYNE RONSON, EMMARENE GRIFFIN, H. B. RANSOM, BOBBY L. RANSOM, MIRIAH CHAPPELL, MAGGIE LEE WALLACE, ELBERT JEAN CORNER, HENRIETTA JOHNSON, DAN TIPPENS, JR., LEE MURRAY TIPPENS, LESLIE TIPPENS, MATTIE TIPPENS, LASALLE TIPPENS, MATILDA TIPPENS, ELLA MAE WASHINGTON, ROBERT WASHINGTON, YOUNG WASHINGTON, CLARENCE WASHINGTON, CLIFTON WASHINGTON, CARNELL WASHINGTON, MARY MAGDALENE WASHINGTON, MATTIE DELOISE WASHINGTON, T. WASHINGTON, JR., EDDIE ARNOLD WASHINGTON, DOUGLAS L. WASHINGTON, WALLACE WASHINGTON, GWENDOLYN WASHINGTON, CINDY WASHINGTON, SHIRLEY WASHINGTON, ELVIN LEE WASHINGTON, ROBERT EARL WASHINGTON, MARY GRACE BEMBRY, IONE HENRY, ZERBINE ELGIN, EUNICE FAYE DAVIS, WILLIAM J. WILLIS, ROBERT G. WILLIS, LULA ANN OSBORNE, MARY L. WASHINGTON, PHEOLA SHAW, CLAUD YELLDELL, W. C. YELLDELL, BILLY RAY YELLDELL, J. C. COX, DOROTHY COX MAYS, JOSHUA COX, VICTORIA COX BURRELL, ARTHUR L. COX, ANNIE MAE JEWETT, KATIE MAE JOHNSON, EDWARD CALHOUN, EULA M. CALHOUN, RUDOLPH McDANIEL, MALACHI McDANIEL, EMMA JEAN McDANIEL, IDELLA McDANIEL, HARVEY McDANIEL, HORCE McDANIEL, JR., BENNIE RUTH POWDRELL, BRENDA SUE BANKS WILLIS, EDDIE L. WILLIS, JESSIE T. WILLIS, WILLIE T. WILLIS, GEORGE R. WILLIS, FRONTIE L. WILLIS, WEILLIAM L. WILLIS, GENEVA WILLIS HOLLINS, VEOLA WILLIS DANIELS, LORENE WILLIS PETERS, ANNIE WILLIS LEE, DOROTHY ANN WILLIS, PEARLIE B. WILLIS JOHNSON, PEARLIE P. WILLIS, NELLIE T. WILLIS MARTIN, AND ANY AND ALL UNKNOWN OR UNNAMED HEIRS AND ASSIGNS.

STATEMENT OF THE CASE

Petitioners brought this civil action pursuant to the First, Thirteenth and Fourteenth Amendments to the United States Constitution and the Federal Civil Rights Act of 1861, 1866, 1870 and 1871 (42 U.S.C. Sec. 1981, 1982, 1983, 1985, 1986 and 1988). Moreover, this civil action arose out of the post Civil War acquisition by ex-slaves Anderson Willis and family of several tracts of land totalling the 2,986 acres, more or less specifically complained that "but for" the laws and/or customs of Freestone County, Texas intentionally refusing or failing to record, recognize, or acknowledge statements, memorials, and/or other muniments of title affecting land ownership and/or inheritances, all being executed as policy statements or decisions officially adopted and promulgated, executed and maintained by Freestone County deed records; judicial and law enforcement systems; and tax and vital statistics departments, marriage, births and deaths departments, and probate system, Petitioners land would not have been unconstitutionally taken by strangers to or fictitious persons in title which the partial abstracts and archival information produced by Petitioners clearly showed. (Appendix F, See First Amended Complaint).

Petitioners specifically claimed that the constitutional deprivations of due process and equal protection of the laws and customs were visited on Petitioners pursuant to Respondent Freestone County's institutional customs that "die hard" and that created and continue to maintain double standards based on race, and/or previous conditions of servitude even though such customs might not have received formal approval in recent years through the various governmental bodies' official decision-making channels. Petitioners specifically alleged that the institu-

tional practices of Freestone County, Texas and those of its employees, of "certifying no record" of Petitioners' and/or their ancestors' existence relative to certain parcels and amounts of the Acreage allowed and encouraged strangers to steal their land with impunity and the protection of law. Petitioners specifically alleged that such institutional customs relative to land ownership, holdings and inheritance permanent and well settled against Petitioners' class in Freestone County, Texas, as to constitute a 'custom or usage' with the force of law. *See generally, Monell v. New York City Department of Social Services,* 436 U.S. 658, 690-91 (1978).

Petitioners specifically alleged race and previous condition of servitude to be at the core of this civil action and are the affirmative links to all unconstitutional actions and inactions intentionally directed at Petitioners and their class from an institutional sense as far as Freestone County is concerned and relative to private citizens' actions as far as individual, non-governmental Respondents and their predecessors in title, interest are concerned.

Basic to understanding Petitioners' First Amended Complaint was the fact that land is unique and an acknowledgment of Petitioners' evidence that the most enduring post-Civil War issues involved questions of black status relative to land ownership, holdings and inheritance. Therefore, Petitioners were attacking a condition which offends the Fourteenth Amendment to the United States Constitution which entitled Petitioners to expect equal protection of the laws of Texas and to due process under the law relative to life, liberty and property. Petitioners specifically alleged that they were directly and continuously impacted by the most relevant of the badges

and incidents of slavery, i.e. slaves could not own, hold or inherit property, especially real property and Petitioners were victims of this same kind, scope and quality of denial based on state action and inaction which abetted, encouraged sanctioned private individuals to steal Petitioners' land. The Petitioners specifically alleged that the record and information supporting their civil action was not available to Petitioners or their ancestors until 1984. The foregoing allegations clearly show a right to proceed to trial by jury. *United States v. Kubrick,* 444 U.S. 111, 122 (1979).

Petitioners alleged and produced unrebutted, substantial historical and contemporary evidence that their inability to know to file their claim before June 19, 1984, was not inexcusable delay, and especially that any prejudice to Respondents by Petitioners' unconscious delay in bringing judicial action cannot be attributed to Petitioners. Petitioners alleged and had uncontroverted proof that they were psychologically and socially impacted by the racially dual system of land divestment employed by Respondent Freestone County, Texas government and the other individual Respondents and/or their predecessors in offices interest or title.

The Petitioners specifically requested equitable relief requesting that Petitioners be recognized under their complaint as the true owners of the Acreage and that the Respondents be required to deliver possession of the Acreage to Petitioners or that some equitable adjustments be made in ownership and possession or that some equitable remedy be fashioned to provide relief. Respondents never offered proof that Petitioners rested on their claim. Respondents never offered proof that they were prejudiced

by the delay. Petitioners offered uncontroverted proof that Petitioners did not cause their own circumstances and in no way participated with Respondents.

Petitioners specifically alleged that the history of the condition of Blacks in Texas relative to their inability to hold, own and inherit property based solely on their race and previous condition of servitude was combined with fraudulent and concealed real property transactions under color of state custom and law and "terrorism". Petitioners specifically alleged that this system of divestment and "terrorism" was intentionally established by local government through direct involvement or through that government's knowing acquiescence and through the administering of laws and customs specifically directed at the recently freed slaves and their descendants and those associated with them. Those laws and customs were legal impediments to addressing "this particular civil action".

Petitioners uncontroverted allegations and proof clearly showed a condition and/or race specific system of intentional, constitutional deprivations of Federal civil rights to own, hold, and/or inherit land in the ex-Confederate, ex-slave State, Texas.

Petitioners uncontroverted allegations and proof clearly and specifically established that intentional, dual, race conscious, legal and customary systems of law enforcement, law courts, recordations connected with land and notice practice, all maintained and executed by Freestone County, Texas in an institutional sense have intentionally deprived and/or aided and abetted private citizens in unconstitutionally depriving Petitioners of their rights to own, hold and inherit land. "But for" those

racially based customs, laws and/or systems, and Petitioners would have owned, held and been able to pass on or inherit and affirmatively deal with the land sought to be recovered as a remedy herein. Petitioners specifically alleged Freestone County, Texas thus as the "moving force" behind the complained of deprivations and the *sine qua non* for private, racially, discriminatory actions taken against Petitioners and the loss of their land.

This civil rights action for damages and injunctive and/or declaratory relief was brought on behalf of Petitioners, the Estate of ex-slave Anderson Willis, Deceased, and his heirs, the Petitioners herein, which heirs are "presently denied the right to inherit the Acreage" based on traditional and contemporary intentional discriminatory treatment, legal and customary, in recordation, civil rights enforcement, judicial and extra-judicial foreclosure, and relative to basic, minimum civil liberties consistent with equal citizenship and necessary to protect Petitioners' land holdings. The County of Freestone, State of Texas is a Respondent herein specifically for affirmatively allowing, encouraging, enhancing and participating in the conditions, laws and customs complained of through County agencies and arms (i.e., Freestone County Tax Assessor's Office, Sheriff's Office, Deed Records Office), prosecuting attorneys, their supervisors, and other elected officials of Freestone County that, as an interwoven unconstitutional system intentionally made, perpetrated and encouraged private actions and inspired illegal conduct through its dual, racial policies, practices and customs.

Petitioners' specifically alleged facts, circumstances and conditions, that showed that, in equity, Plaintiffs' claims

are not otherwise time barred or frivolous. The facts, circumstances and conditions were specifically alleged to be intended by Respondents and/or their predecessors-in-title, interest or office, to be extraordinary and self-sealing, self-executing, and self-concealing for a period of time necessary to bar any law remedy relative to the land.

Petitioners specifically alleged that the series of events leading to this civil action were not misfortunate and unintended but were a pattern and routine practice intentionally directed at Petitioners' race. Petitioners specifically alleged that any wrongdoing by Respondents and/or their predecessors-in-title, office, or interest amounted to more than bare violations and were part of an aggravating circumstance that in equity should be addressed. Petitioners specifically alleged that the natural, probable and foreseeable result of enforcing a racially dual system of recordation, notice and law enforcement and not protecting Petitioners' race from Klan and white hate activity was to cause land holdings in Freestone County and the whole of Texas to shift by fraud and terror from Blacks to Whites and hence to increase or perpetuate the condition of servitude.

Petitioners specifically alleged that the county officials individually, and in their official capacities as the government created, executed and maintained *de jure* and *de facto* racial classifications that had and continue to have reasonably foreseeable discriminaory effect on Petitioners ability to own, hold and inherit land and were customs and policies applied and currently applied in an intentionally, discriminatory manner. The circumstances and conditions alleged and under which Petitioners and their

predecessors lost the land along with Petitioners' race at those times are important inquiries. Peitioners with specificity attack the overall unconstitutionality of Black land loss under the conditions alleged by pointing to the egregious irregularities openly known to whites but denied to Blacks based on their race and/or previous condition of servitude and the dual society, one black and the other white in Freestone County, Texas. In this regard, Petitioners have specifically alleged that the System of Recordation in Freestone County was employed to take their family's land. The System as alleged clearly shows that Blacks were traced and openly and easily identified through racial codes, classifications and distinctions when it came to land holdings. After the Civil War, Blacks were placed initially on a Freedmen's List of Property Owners and subsequently followed by the letter "c" for "colored" in *inter alia,* the Tax and Deed Records Departments of Freestone County. Deeds to Blacks in post-Civil War Texas contained similar references including "(col.)" which allowed the local authorities to keep track of Black land holdings. Further, the fact that every or substantially every case involving Petitioners, their ancestors and other Blacks contain Freestone County Sheriff's returns that are specifically alleged to be false and fraudulent based on Petitioners' race and/or previous condition of servitude and specifically alleged to be a device employed by Freestone County to intentionally aid and abet the private and public schemes to take Anderson Willis' land and to prevent his issue from inheriting that Acreage.

REASONS FOR GRANTING WRIT

A. A writ of Certiorari should be granted to review the questions presented which concern whether the Fifth Circuit approved "across-the-board" denial of Petitioners' claims based on admissions by parties in *Cross v. Lucious* should stand in light of no evidence of any such admissions in Petitioners case. Petitioners seek a review of the Court of Appeals affirmance of an August 7, 1987 Memorandum Opinion and Order entered by the District Court which found that Petitioners' claims under the Civil Rights Act, 42 U.S.C. Sec. 1981 et seq., were barred by the Texas two-year statute of limitations, Tex. Rev. Civ. Prac. & Rem. Code Sec. 16.003. Moreover, this Petition seeks to review the Fifth Circuit's affirmance of the District Court's determinations as to when Petitioner's civil rights' actions accrued and whether such accruals were tolled until June 19, 1984 or until less than two years prior thereto. The Fifth Circuit Court of Appeals is incorrect on the foregoing issues. Whether a District Court may use an across-the-board approach to deny substantial and unique rights to own, hold and inherit land to blacks who have been unconstitutionally divested of that land based on their race and previous condition of servitude is a substantial and important federal question which has not been but should be settled by this court.

Further, this petition seeks a review of the Fifth Circuit's affirmance of the District Court's determination that Petitioners never specified any relation between the named Defendants and any alleged constitutional violations.

Petitioners seek to show this Court that the Appeals Court's affirmance of the District Court was error in that the District Court weighed the evidence and determined the truth of the matters advanced by Petitioners' uncontroverted evidence and the inferences to be accorded said evidence rather than merely determining whether there were genuine issues of material fact for trial by jury.

Petitioners seek to show this Court that as a matter of law, the credibility determinations, the weighing of evidence and the drawing of inferences from the facts alleged by Petitioners' First Amended Complaint and Petitioners' Supplemental Response to Defendants Motions for Summary Judgment and supported by accompanying exhibits are jury functions and that summary judgment was inappropriate.

B. Land is unique. A Writ of Certiorari should be granted to allow review of the unconstitutional deprivations created, executed and maintained by the Freestone County, Texas racially dual system of land ownership, holdings and inheritance. No affirmative action has been taken to disestablish that system which was unconstitutional when established and created with the specific intent to deny blacks the rights and remedies of the 13th and 14th Amendments and 42 U.S.C. Sec. 1981 and 1982.

C. Whether the Fifth Circuit Court of Appeals may sustain a district court's total lack of treatment of black Petitioners' claims that the intentional and intense psychological impact of their condition of servitude and lack of citizenship and educational opportunities up to and including 1984 had a strong residual and evolving impasse to their discovery of and ability to know the

essential elements of their causes of action is an important and substantial federal question which has not been, but should be, settled by this Court. Most of the Petitioners are very elderly or too old to have benefited from equal educational and social opportunities in the close, small rural Freestone County, Texas.

D. Finally, the decision is contrary to the treatment of the Japanese-Americans and Native Americans who have been successful in having their rights recognized after long lapses of time. This Court recently manifested a willingness to hear a case that had substantially been decided. *See generally, Hohri v. United States,* ____U.S. ____, 107 S. Ct. 2246, 96 L.Ed.2d 51 (1987) which more closely resembles the instant case. While this Court sidestepped the Statute of Limitation and laches issues based on procedural grounds, Petitioners' approach and theory are validated somewhat by this Court's willingness to resolve the issues created by *Hohri.* More insight is given to the court's willingness to resolve the issues created by *Hohri* relative to the Statutes of Limitations and laches by Justice Blackmun's statements in his concurring opinion:

> I join the Court's opinion and its judgment. . . . There are three reasons for my concern. The first is the consequent element of further delay in the decision on the merits in a case that has roots already more than four decades old. The issue on the merits probably will be back in this Court once again months or years hence. . . .

United States v. Hohri, ____U.S.____, 107 S. Ct. 2246, 96 L.Ed.2d 51 (1987) (concurrence of Justice Blackmun).

THE QUESTION IS SUBSTANTIAL

This Court has not had an opportunity to review whether issue involving black Petitioners claiming unconstitutional divestment of land based on racially dual systems of land ownership, holdings and inheritance created, executed and maintained by a state and/or local government which by design aided and abetted, encouraged and enhanced and enforced private, complex or open fraud and along with lawlessness practiced against said black Petitioners/landowners who alleged along residual psychological and social damage from their condition of servitude and lack of basic citizenship rights can be decided by summary judgment when Petitioners pleadings and proof have not been controverted and no evidence exists to show that Petitioners were not diligent and slept on their rights once acquired by current civil rights legislation. This question is important to black citizens who have attempted and continue to try to own, hold and inherit land, especially in small isolated counties of the Old South where the practices, laws and customs flourished.

THE DECISION BELOW IS INCORRECT AND AGAINST FEDERAL CIVIL RIGHTS POLICIES CREATED TO ALLOW BLACKS TO OWN, HOLD AND INHERIT LAND

The decision below is not in compliance with this Court's decisions in *Anderson v. Liberty Lobby, Inc.*, ____U.S.____, 106 S. Ct. 2505, 2511 (1986), *United States v. Kubrick*, 444 U.S. 111, 122 (1979) *and Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

A. It is clear enough from the Supreme Court's recent cases that at the summary judgment stage the judge's function is not limited to weigh the evidence and determine the truth of material matters, but to determine whether there is a genuine issue for trial by the jury. *Anderson v. Liberty Lobby, Inc.*, ____U.S.____, 106 S. Ct. 2505, 2511 (1986). In this regard, the trial court assessed the evidence presented by black Appellants and accorded weight and inferences thereto which was clearly an abuse of his discretion under *Anderson v. Liberty Lobby, Inc., supra.* The court accorded the moving parties inferences and presumptions not supported by evidence inasmuch as the moving parties presented no evidence. This is clearly an abuse of discretion under *Anderson v. Liberty Lobby, Inc., accord, Impossible Electronics v. Wackenhut Protective Systems, Inc.*, 669 F.2d 1026, 1030 (5th Cir. 1982). *Casey Enterprises v. American Hardware Mutual Insurance Co.*, 655 F.2d 598, 602 (5th Cir. 1981); *Clemons v. Dougherty County, Georgia,* 684 F.2d 1365, 1368-1369 (1982).

B. The Appeals Court's decision renders the Reconstruction statutes and the 13th and 14th Amendments meaningless as to black land ownership, holdings and inheritance and does not promote federal civil rights law. The main goal of Section 1983 was to override the corrupting influence of the Ku Klux Klan and its sympathizers on the government and law enforcement agencies of the southern states and one strong motive behind its enactment was great Congressional concern that the state courts had been deficient in protecting federal rights. *Allen v. McCurry,* 449 U.S. 90, 101 S. Ct. 411 (1980). *Burnett v. Grahan,* 104 S. Ct. 2924 (1984) goals of reconstruction era civil rights statutes are compensation

of persons whose civil rights have been violated and prevention of abuse of state power. Although adequate in theory, the State remedy for Blacks relative to land ownership, was not available in practice in Respondent Freestone County, Texas. To this extent, Congress wanted to provide a remedy in Federal Courts supplementary to any remedy any State might have. *See e.g., McNeese v. Board of Ed. for Community Unit School Dist. 187, Cahokia, Ill.,* 373 U.S. 668 (1963) (purposes of Sec. 1983 were to override the results of the insidious laws, state acts, customs, traditions, codes and institutions peculiar to or having a peculiarly disparate impact on Plaintiffs and their class due to their race of previous condition of servitude). In enacting section 1983 (the Civil Rights of 1871), Congress had been especially concerned with murder, whippings, lynchings and "banishings," and that statutory remedy was meant to restore peace and "justice". These sorts of allegations dominate Petitioners' First Amended Complaint and proof. *Jones v. Preuit & Mauldin,* 763 F.2d 1250 (11th Cir. 1985), *rehearing denied,* 772 F.2d 918 (11th Cir. 1985) (Section 1983 was intended to grant broad civil right of redress to any person victimized by an abuse of state power which deprived him of federally secured rights). (Emphasis supplied.) *Accord, e.g., Golden v. Biscayne Bay Yacht Club,* 530 F.2d 16 (5th Cir. 1976), *cert. denied,* 429 U.S. 872 (1976) (section 1983 "preserves and enforces" as against state action, rights, privileges and immunities secured by the Constitution and laws).

Section 1981 applies to all types of racial discrimination, public or private. *Taylor v. Jones,* 653 F.2d 1193 (8th Cir. 1981). A claim that county official acting under color of law and the County government as an

institution refused to perform acts (*e.g.*, recordation of muniments of title and refusing to make proper tax records showing true extent of ownership) even discretionary ones, solely on the basis of Plaintiffs' race states of a cause of action under 42 U.S.C. Sec. 1981. *Jafree v. Barber,* 689 F.2d 640 (7th Cir. 1982). (1) In order to demonstrate a violation of Sec. 1981, it is only necessary that the Plaintiffs show that they were unlawfully denied, by the Defendants, one of the rights protected by that section. *Vietnamese Fishermen's Ass'n v. Knights of Klu Klux Klan,* 518 F. Supp. 993 (S.D. Tex. 1981). (2) *Gordon v. City of Cartersville,* 522 F. Supp. 753 (N.D. Ga. 1981) (where racial discrimination motivated by anti-black feeling is displayed against whites, said whites may recover under Sec. 1981). (3) *Vaughn v. Pool Offshore Co., a Div. of Pool Co. of Texas,* 683 F.2d 922 (5th Cir. 1982) (must not only prove disparate and differential impact on persons but also prove governmental act or, in adopting or employing challenged practices or undertaking the challenged action, intended to treat similarly situated persons differently on basis of race). These are the allegations in proof of Petitioners' First Amended Complaint.

The practices of: (1) not legally acknowledging the full extent of Anderson Willis' land holdings and failing or refusing to record such (3) the "tracking" of ex-slaves and free blacks on the county records with "FREEDMEN OWNERSHIP RECORDS" or other institutional indications for blacks by the Tax Office and Deed Records offices (5) the County's custom of refusing admittance of Blacks to the area containing the tax and/or deed records and/or of giving and certifying false information relative to same and for the benefit of

Defendants and based solely on Plaintiffs race, previous condition of servitude and associational preference, and (6) custom of banishing Blacks and those associated with Blacks from certain areas in Freestone County and keeping said exiles out by terrorism, which was enforced, enhanced and participated in by the Freestone County government, until the Tax period of limitations on trying to land expired, should militate against this Court allowing Appellants' historical family cemetery and the necessary and normal contiguous land to be taken by summary judgment.

C. When a summary judgment motion is made, all reasonable doubts must be resolved in favor of the party opposing the motion and the motion must be denied if there are any unresolved factual issues. Laches is inapplicable to this case inasmuch as Appellees as moving parties under Rules 12(b) and 56 have not produced any evidence. Further, the fact issues as to whether Appellants delay in bringing this civil action is inexcusable and whether any prejudice by such delay was due to Appellants or Appellees or their ancestors or predecessors-in-interest, title or office should be tried by a jury. *Compare e.g., Anderson v. Liberty Lobby, Inc.,* 106 S. Ct. at 2510 *with Howard v. Roadway Express, Inc.,* 726 F.2d 1529 (11th Cir. 1984) *and Harvey v. The Great Atlantic and Pacific Tea Company, Inc.,* 388 F.2d 123, 124-25 (5th Cir. 1968).

D. The District Court erred in inferring an admission by black Appellants that they could have effectively pursued their claims in 1968 after the Martin Luther King, Jr. era, especially when he was assassinated for inquiring into rights for blacks. In this regard, the Ap-

peals Court's affirmance of the Trial Court's attempt to fashion Petitioners' civil action as close to that in *Cross v. Lucious,* 713 F.2d 153 (5th Cir. 1983) is clearly erroneous as to that fact finding. Indeed, Appellants' First Amended Complaint and other responsive pleadings resisting Respondents' Motions under Rules 56 and 12(b) specifically and unequivocally state, and present substantial evidence, that Appellants could not have effectively inquired or, done anything about their circumstances under June 19, 1984. These sort of factual conclusions without any production by Appellees are an abuse of the Trial Court's discretion under the principles announced in *Anderson v. Liberty Lobby, Inc.,* 106 S. Ct. at 2511. *Accord, Adickes v. S.H. Kress & Co.,* 398 U.S. 144 (1970); *First National Bank of Arizona v. Cities Service Co.,* 391 U.S. 253 (1968).

E. Unlike Appellants in *Cross v. Lucious,* 713 F.2d 153 (5th Cir. 1983), Petitioners herein have offered unopposed documentary and testimonial evidence in opposition to Respondents' Motions for Summary Judgment and Rule 12(b) that clearly identifies the exact names and status of either Respondents or their ancestors and/or their predecessors-in-title, interest or office. The specific transactions pointed out in the First Responses and Supplemental Responses to Respondents' Motions for Summary Judgment and under Rule 12(b) further show the specific conduct forming the historic and contemporary basis of this civil action. On this basis, *inter alia,* Petitioners contend *Cross v. Lucious* is distinguishable.

F. Finally, unlike Appellants in *Cross v. Lucious,* Petitioners herein allege that Respondents and their ancestors prevented Petitioners from pursuing their claim

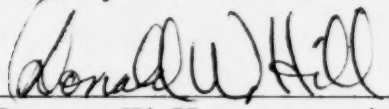
and kept them in ignorance of their cause of action and that there were many legal, customary, political policy barriers to bringing their action, which allegations were vigorously disputed by Respondents as a material fact question. To allow Respondents (including their predecessors) to go unpunished forever with no recognition of Petitioners' rights to own, hold or inherit the land herein and based on said Respondents' (or their predecessors') ability to control the circumstances and time under which the Petitioners actually discover or present their claims *and* then to disallow review based on an artificial period of time for bringing their claims to correct the situation which, under the circumstances, was the earliest moment possible that the claims manifested themselves in clear, articulable form maintains and perpetuates a dual system of race-based rules for justice relative to land, ownership, holdings and inheritance in Texas.

CONCLUSION

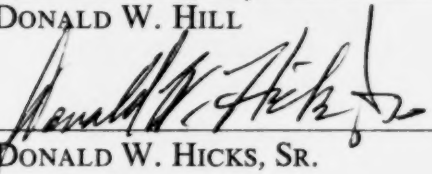
For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

HILL HICKS COLLINS
Attorneys and Counselors at Law



DONALD W. HILL



DONALD W. HICKS, SR.

One Main Place
1201 Main Street, Suite 1530
Dallas, Texas 75250
(214) 744-0255

and

LAW OFFICES OF CRAIG WASHINGTON
HONORABLE CRAIG WASHINGTON, ESQ.
SIDNEY BRAQUET, ESQ.
1000 The Houston Building
2323 Caroline Street
Houston, Texas 77004-1081
(713) 659-9090

Attorneys for Petitioners

APPENDIX

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-1660

ESTATE OF ANDERSON WILLIS, ET AL.,
Plaintiffs-Appellants,

v.

ESTATE OF JOHN RILEY, ET AL.,
Defendants-Appellees

Appeal from the United States District Court
for the Western District of Texas

ON PETITION FOR REHEARING

(September 28, 1988)

Before CLARK, Chief Judge, JOHNSON and JOLLY, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/s/ E. GRADY JOLLY
United States Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-1660
Summary Calendar

D.C. Docket No. W-84-CA-112

ESTATE OF ANDERSON WILLIS, ET AL.,
Plaintiffs-Appellants,

v.

ESTATE OF JOHN RILEY, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas

(Filed August 25, 1988)

Before CLARK, Chief Judge, JOHNSON and JOLLY, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal and was taken under submission on the briefs on file.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the District Court in this cause is affirmed. IT IS FURTHER ORDERED that appellees' request for double costs and attorneys' fees is denied.

IT IS FURTHER ORDERED that plaintiffs-appellants pay to defendants-appellees the costs on appeal, to be taxed by the Clerk of this Court.

August 25, 1988

ISSUED AS MANDATE: OCTOBER 11, 1988

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-1660
Summary Calendar

ESTATE OF ANDERSON WILLIS, et al.,
Plaintiffs-Appellants,

v.

ESTATE OF JOHN RILEY, et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(W-84-CA-112)

(August 25, 1988)

Before CLARK, Chief Judge, JOHNSON and JOLLY, Circuit Judges.

PER CURIAM:*

The plaintiffs, the descendants of Anderson Willis, a former slave, seek to reclaim approximately 2,986 acres of land located in Freestone County, Texas, that Willis once owned and that they claim was fraudulently taken

---

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

from him by certain white citizens, and the Ku Klux Klan or a similarly situated group, with the support and consent of Freestone County public officials. In addition to their claims arising under the laws of the state of Texas, they seek remedy pursuant to the Civil Rights Act, 42 U.S.C. § 1981, *et seq.* Upon motion by the defendants, the district court dismissed this case because it found that the statute of limitations had expired on their federal claims and that the plaintiffs had failed to state a cognizable cause of action under the Civil Rights Act. Because we find that the statute of limitations has expired, we affirm the district court.[1]

The plaintiffs do not deny that their cause of action accrued in the late 1800s. They also agree that the Texas two-year statute of limitations is applicable to this personal injury action. *See* Tex. Rev. Civ. Prac. & Rem. Code § 16.003. They argue, however, that the statute of limitations should be tolled from the time their cause of action accrued until the time they actually filed this suit because the history of segregation and racial discrimination in this country, and particularly in Freestone County, prevented the Willises from researching their claim or seeking legal redress for it. Specifically, as the plaintiffs note in their first amendment complaint, "the right to question and research in the county records

1. In determining that the plaintiffs failed to allege a cognizable cause of action, the district court relied primarily upon our prior opinion in *Cross v. Lucius,* 713 F.2d 153 (5th Cir. 1983). In that case, however, the majority specifically declined to rule upon whether a claim of this type is cognizable under 42 U.S.C. § 1981, *et seq. Cross,* 713 F.2d at 156. We therefore cannot say that had the plaintiffs been able to overcome the limitations problem, they could not bring suit under the Civil Rights Act. We take no position on this issue, however, because given the failure to meet the limitations requirement, it is not necessary to decide.

came to blacks on a step-by-step basis and only after the Martin Luther King era of Civil Rights."

The district court in its opinion recognized and acknowledged this systematic history of discrimination, but as it also properly recognized that, even given this history of invidious discrimination which no doubt affected the plaintiffs' legal rights, they have not alleged specific facts that would explain why they were unable to pursue their claims during the twenty years that they acknowledge have passed between the late 1960s and the date they filed suit. Instead, the Willises present only two specific incidents that they claim show harassment by the state in connection with this suit. They allege that Jeanette Willis Atkins, the sixty-three-year-old greatgranddaughter of Anderson Willis, was assaulted by Freestone County tax assessor Patsy Stroud. They also contend that the state selectively chose to prosecute Eddie Willis on "trumped up" trespassing charges in order to encourage him to drop the suit. Although we make no judgment on whether these claims are valid, we note that even assuming that they could be interpreted as the plaintiffs claim they must, both occurred after this lawsuit had been filed. Neither instance is a factual allegation that relates to the plaintiffs' failure to pursue their rights during the past twenty years. In the absence of specific factual allegations related directly to the Willis family itself, and their particular situation with respect to access to the courts, this case is clearly controlled by out ruling in *Cross v. Lucius,* 713 F.2d 153 (5th Cir. 1983). In that case, we stated that

> even if the plaintiffs' allegations that they could not have obtained legal representation during the earlier part of this century because no lawyer would repre-

> sent a black person in a suit against a white person are true, the plaintiffs conceded at oral argument that this situation had improved by the 1960s, perhaps as a result of the upsurge in civil rights litigation during that period. The plaintiffs still delayed twenty years from that time until they brought this action.

Cross, 713 F.2d at 158. Although it is conceivable that in some future case a set of facts will be presented that would justify tolling the statute even during the "post civil rights" era, those facts were not provided by the Willises here. For those reasons, we AFFIRM the decision of the district court.

Finally, with respect to the appellees' request for double costs and attorneys' fees under 28 U.S.C. §§ 1912 and 1922, and Fed. R. App. P. 38, although we affirm, we do not find the appeal to be an unreasonable vexatious multiplication of litigation or to be frivolous. In the exercise of our discretion, the appellees' request is D E N I E D.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

CIVIL ACTION NO. W-84-CA-112

ESTATE OF ANDERSON WILLIS, ET AL.,
Plaintiffs,

v.

ESTATE OF JOHN RILEY, ET AL.,
Defendants.

(Filed August 7, 1987)

MEMORANDUM OPINION AND ORDER

Came on this date to be considered the motion of each Defendant to dismiss the above-styled and numbered cause. The Court, having considered said motions and the responses thereto, finds that they are meritorious and should be granted.

I.

The Plaintiffs, Anderson Willis' Estate and heirs, invoke this Court's jurisdiction pursuant to the Civil Rights Act, 42 U.S.C. § 1981 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, the First, Thirteenth and Fourteenth Amendments to the United States Constitution, and assert pendent jurisdiction for additional claims arising under the laws of the State of Texas. The basis for this action involves the alleged wrongful "taking" of Plaintiffs real property by "certain white citizens" at a time when blacks in Texas were subjected to a "system of divestment and terrorism."

Anderson Willis, a former Negro slave, came to Texas sometime after June 19, 1865. While in Texas, the Plaintiffs allege that Willis eventually "purchased, claimed or owned" approximately 2,986 acres of land located in Freestone County, Texas. However, the Plaintiffs contend that Willis and his descendants were systematically driven off their property because of their race by the Ku Klux Klan or a similarly situated group with the support and consent of Freestone County public officials. The events complained of by the Plaintiffs supposedly occurred in the latter quarter of the nineteenth century.

The Plaintiffs describe Freestone County, Texas, at the time of the taking, as a "system of two societies, one white and one Black." In this system, the whites controlled both the deed records and access to the courthouse. According to the Plaintiffs, the blacks in Freestone County were seldom, if ever, recognized as citizens with legal rights and, more often than not, were both physically and psychologically intimidated by the whites. The Plaintiffs' complaint states that acts of racial discrimination "prevailed" in Freestone County even up to the time of the filing of the complaint in June of 1984.

As a result of this dual racial system, the Plaintiffs claim that certain whites were able to defraud Anderson Willis out of his property. Specifically, the Plaintiffs suggest that Freestone County government officials refused to record most of Willis' land purchases because of his race and altered legal documents in order to let whites claim the land. Additionally, the Plaintiffs further allege that Willis' white neighbors and Freestone County authorities conspired to forge Willis' signature

on false promissory notes which were secured by family land. The Plaintiffs state that when Willis was unable to pay the money he had never actually borrowed, the land was foreclosed upon by those who had participated in the conspiracy. Another "scheme" Plaintiffs refer to involves the Jose Ygnacio Aguilera Mexican land grant. The Plaintiffs contend that Anderson Willis was never notified that litigation regarding the title to this land was pending in another county and, as a result, lost any legal right to the land he may have had. As a result of the above-mentioned allegations, the Plaintiffs filed suit in this Court on June 19, 1984.

The Defendants responded to Plaintiffs' complaint by filing either a motion to dismiss or a motion for summary judgment. These motions allege that Plaintiffs' complaint should be dismissed because 1) it is barred by the applicable statute of limitations and/or 2) it does not assert that any named Defendant violated the civil rights of any named Plaintiff. The Court will now address and analyze each of the Defendants' contentions as it relates to the Plaintiffs' complaint.

II.

Federal Rules of Civil Procedure 12(b)(6) permits a party to file a motion to dismiss alleging a statute of limitations defense. The motion to dismiss, however, cannot be granted unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Cross v. Lucius,* 713 F.2d 153, 156 (5th Cir. 1983) *quoting Mann v. Adams Realty Co.,* 556 F.2d 228, 293 (5th Cir. 1977).

A. *The Applicable Statute of Limitations*

The Defendants argue that the Plaintiffs' claims under the Civil Rights Act, 42 U.S.C. § 1981 *et seq.*, are barred by the statute of limitations. Since there is no federal statute of limitations which applies to civil rights action, the Court must follow the three-step process outlined in 42 U.S.C. § 1988 to determine the applicable limitations period. *See Wilson v. Garcia,* ___ U.S.___, 105 S.Ct. 1938, 1943 (1985). The first step set forth in § 1988 directs that the laws of the United States apply "so far as such laws are suitable to carry . . . into effect" the statute at hand. *See* 42 U.S.C. § 1988. Second, if there is not an applicable federal rule, the Court should apply the "common law, as modified and changed by the constitution and statutes" of the state in which the Court sits. *See id.* Finally, the Court must be convinced that the state law is consistent with the laws of the United States. *See id.*

In regard to the first step, the Court has previously noted that a federal statute of limitations does not exist as to civil rights actions. Therefore, the Court must look to state law to determine the appropriate statute of limitations as required by the second step contained in § 1988. *See Wilson,* 105 S.Ct. at 1943.

In *Wilson v. Garcia,* the United States Supreme Court examined the manner in which § 1983 claims should be classified for the purpose of determining the appropriate state statute of limitations. *See Wilson,* 105 S.Ct. at 1949. The Court held that all § 1983 actions should be characterized as involving claims for personal injuries. *See id.* Additionally, the Court further held that the one most appropriate statute of limitations in each

state should be selected for all § 1983 claims. *See id; see also Gates v. Spinks,* 771 F.2d 916, 918 (5th Cir. 1985). Regarding federal civil rights actions in Texas, the Fifth Circuit has found the Texas two-year statute of limitations, Tex. Rev. Civ. Prac. & Rem. Code § 16.003, to control in such cases. *See Peter Henderson Oil Co. v. City of Port Arthur,* 806 F.2d 1273, 1274-75 (5th Cir. 1987); *Longoria v. City of Bay City,* 779 F.2d 1136, 1138 (5th Cir. 1986). As such, before addressing whether Plaintiffs' claims are barred by the Texas two-year statute of limitations, the Court must first ascertain when the Plaintiffs' cause of action accrued.

B. *Accrual of the Cause of Action*

Although the state statute of limitations governs the timeliness of federal civil rights' actions, the question of when a cause of action accrues is controlled by federal law. *See Moore v. El Paso County,* 660 F.2d 586, 590 n. 4 (5th Cir. 1981); *Lavellee v. Listi,* 611 F.2d 1129, 1130 (5th Cir. 1980). In the Fifth Circuit, a civil rights' cause of action accrues "when [the] plaintiff knows or has reason to know of the injury which is the basis of the action." *Longoria,* 779 F.2d at 1138; *Lavellee,* 611 F.2d at 1131. In other words, the limitations period begins to run "when the plaintiff either is or should be aware of both the injury and its connection with the alleged acts of the defendant." *Longoria,* 779 F.2d at 1138.

In this suit, the Court finds that the Plaintiffs either knew or had reason to know of the alleged fraudulent land schemes by at least 1904 and were on notice of problems with their title to the land as early as 1870.

For instance, the Plaintiffs' complaint indicates that they became aware of the allegedly fraudulent promissory notes which were converted to judgment liens when foreclosure occurred in 1904. (Plaintiffs' First Amended Complaint at pgs. 32-33, ¶ 36(a)). Also, the Court finds that the Plaintiffs had reason to know of a problem with their title to certain portions of the land when their names, or Willis' name, did not appear on the tax rolls even though the land was allegedly purchased in 1869. The Court is of the opinion that the Plaintiffs had a duty to exercise reasonable diligence to ascertain if there was a problem with their title to the land when they were put on notice by such events as not being included on the tax rolls, finding no record of their ownership of the land in the deed records and not being permitted access to land which they claim was their own. Consequently, absent the tolling of the statute of limitations, the Plaintiffs should have filed this suit approximately one hundred years ago.

C. *Tolling the Statute of Limitations*

The Plaintiffs claims that the statute of limitations should be tolled because:

> [t]he combined effect of the several different sources of government control or support operating on an institutional basis and under the described system (Sheriff Department—Deed Records—Judicial Involvement) made it impossible to contest or prevent the complained of unconstitutional taking of the acreage.
>
> (Plaintiffs' First Amended Complaint at pgs. 29-30, ¶ 33).

Specifically, the Plaintiffs allege that they were precluded from filing suit before June 19, 1984, because the facts necessary to maintain this lawsuit were fraudulently concealed by certain whites in Freestone County, Texas. Additionally, the Plaintiffs maintain that "the [Ku Klux] Klan and their system . . . closed the courthouse door" to the Plaintiffs and that the Defendants' predecessors-in-interest contributed to the perpetuation of this alleged dual racial system. (Plaintiffs' First Amended Complaint at pg. 50, ¶ 66(a)).

In determining whether the Plaintiffs' allegations of fraudulent concealment tolls the statute of limitations, the Court must examine the relevant state law. *See Johnson v. Railway Express Agency,* 421 U.S. 454, 465 (1975). The Texas Supreme Court has recognized that fraudulent concealment of material facts may toll the statute of limitations. *See Borderlon v. Peck,* 661 S.W.2d 907, 908 (Tex. 1983). A party may invoke fraudulent concealment to estop a defendant from relying on the statute of limitations as an affirmative defense to a plaintiff's claim when the defendant is under a duty to make a disclosure but "fraudulently conceals the existence of a cause of action from the party to whom it belongs." *Id.* at 908; *see also Nichols v. Smith,* 507 S.W.2d 518, 519 (Tex. 1974). The Court, however, notes that a party may only rely on fraudulent concealment "until the party learns of the right of action or should have learned thereof through the exercise of reasonable diligence." *Borderlon,* 661 S.W.2d at 908.

The Court has previously noted that the Plaintiffs should have been aware of problems with the title to their land as early as 1870 and the Plaintiffs' complaint

indicated that the Plaintiffs were aware of the fraudulent promissory note schemes in 1904. (Plaintiffs' First Amended Complaint at pgs. 32-33, ¶ 36(a)). Therefore, since the Plaintiffs were aware of their potential for a cause of action in at least 1904, the Court finds that the Plaintiffs' reliance on fraudulent concealment is misplaced and unpersuasive. Furthermore, the Court is also of the opinion that the Plaintiffs could have learned of their right of action through the exercise of reasonable diligence.

Nevertheless, the Court does recognize the Plaintiffs' contention that they were denied access to the Freestone County, Texas, Land Records and Courthouse. The Plaintiffs' complaint, however, belies the fact that they were denied access to the court and land records up until June 19, 1982, the date two years prior to the filing of their complaint. In support of this finding, the Court notes that the Plaintiffs' First Amended Complaint indicates that blacks were permitted ". . . to question and research in the county records . . . after the Martin Luther King era of Civil Rights." (Plaintiffs' First Amended Complaint at pg. 41, ¶ 44). Therefore, based upon Plaintiffs' own admission, the alleged fraudulent concealment ended in 1968. As such, taking Plaintiffs' First Amended Complaint in its most favorable light, the two year limitations period began to run in 1968 and expired in 1970, thus barring the Plaintiffs' suit.

A case closely analogous to the present action is *Cross v. Lucius,* 713 F.2d 153 (5th Cir. 1983). In *Cross,* the descendants of Irving Cross, a black man, brought a civil rights action against the descendants of R. J. Lucius, Jr., a white man, alleging that Lucius

forged deeds to defraud Cross and his family of their land. The supposed fraudulent deeds which conveyed the property from the Crosses to Lucius were executed in the 1920's. As such, the defendants of Lucius raised the statute of limitations as a defense to the Plaintiffs' claims. As in the present action, the Plaintiffs in *Cross* claimed that the statute of limitations should be tolled because blacks in Louisiana have been precluded from bringing suit against whites because of racial prejudice. The Fifth Circuit rejected the Plaintiffs' tolling argument and held that their claims were barred by the applicable Louisiana statute of limitations. *See id* at 158. In denying the Crosses tolling argument, the Fifth Circuit stated that:

> [t]here is no allegation that the Lucius defendants, or even their ancestor, prevented the plaintiffs from pursuing their claim or kept them in ignorance of their cause of action, nor was there any legal barrier to the plaintiffs' bringing this action.

Id. at 158.

The Plaintiffs, however, suggest that *Cross* can be distingued from the instant action on the facts. The Court, having previously addressed these distinctions, finds the Plaintiffs' position unpersuasive. Applying the principles set forth by the Fifth Circuit in *Cross* to the present case, the Court is of the opinion that the Plaintiffs' action should be dismissed as barred by the statute of limitations, Tex. Civ. Prac. & Rem. Code § 16.003.

III.

The Court may dismiss this suit not only for being barred by the statute of limitations, but also because the Plaintiffs' complaint fails to assert that any named

Defendant violated the federally protected rights of any named Plaintiff. Since the Plaintiffs filed this action pursuant to the Civil Rights Act, 42 U.S.C. § 1981 *et seq.*, they may maintain it only against those particular individuals who violated their civil rights. *See* 42 U.S.C. § 1981 *et seq.*, *Cross v. Lucius,* 713 F.2d 153, 159 (5th Cir. 1983) (Clark, J., concurring).

In this suit, the Plaintiffs' First Amended Complaint merely alleges that:

> 1) Defendants got control and possession of the land due to the extraordinary closed society of the white race, which was self-executing, self-sealing and self-concealing combined with unknowable and undiscoverable fraud (Plaintiffs' First Amended Complaint at pg. 29, ¶ 32);
>
> 2) [C]ertain white citizens in Defendants' chain of title, in conspiracy, created fraudulent promissory notes (Plaintiffs' First Amended Complaint at pg. 31, ¶ 35);
>
> 3) Any and all Parties who have dealt with the ACREAGE or parcels thereof had specific knowledge of the institutional fraud and the history of civil rights violations practiced on the Plaintiffs (Plaintiffs' First Amended Complaint at pg. 50, ¶ 65).

Having reviewed the above-mentioned allegations and others listed in Plaintiffs' First Amended Complaint, it is clear that the Plaintiffs have failed to assert that any named Defendant violated the federally protected civil rights of any Plaintiff. In fact, the Plaintiffs' First Amended Complaint never specifies any relation between the named Defendants and any alleged constitutional viola-

tions. It appears that a large majority of the Defendants were so named only because they are the present landowners of the property in dispute.

Addressing a similar issue in *Cross v. Lucius,* Judge Clark in a concurring opinion stated:

> [h]ere the alleged wrongdoer has been dead for decades. The defendants named in this suit are not here as survivor-representatives of the deceased violator but only because they happen to be successors-in-title to the only person the statutes allow to be sued. If they were complete strangers to the original R. J. Lucius and just happened to have purchased the property, the claim would be the same: R. J. Lucius acted under color of law to deprive our ancestors of this land, we are the rightful owners of title, give us back our land. Allowing the plaintiffs to proceed against these parties under sections 1983 and 1985(3) would create a right of action which these statutes do not grant. If those who hold the property that person acquired are to be made accountable, it must be under state property law, not these statutes. I agree with the district court: There is no room in these civil rights statutes for the sins of the father to be visited upon his children.

The Court is of the opinion that Judge Clark's reasoning is just as applicable in this case as it was in *Cross.*

Having determined that the Plaintiffs' claim under the civil rights statutes which supported federal jurisdiction should be dismissed, in light of *United Mine Workers v. Gibbs,* 383 U.S. 715 (1966), and *Daniels v. All Steel Equipment, Inc.,* 590 F.2d 111 (5th Cir. 1979), this Court declines to exercise pendent jurisdiction and dismisses the state claims without prejudice. Accordingly,

IT IS, THEREFORE, ORDERED that the Defendants' motions to dismiss and motions for summary judgment be and hereby are GRANTED and this cause be and hereby is DISMISSED.

SIGNED this 7th day of August, 1987.

/s/ WALTER S. SMITH, JR.
Walter S. Smith, Jr.
United States District Judge

APPENDIX "B"

NO. 87-1660

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ESTATE OF ANDERSON WILLIS, ET AL.,
Plaintiffs-Appellants

v.

ESTATE OF JOHN RILEY, ET AL.,
Defendants-Appellees

On Appeal from the United States District Court
for the Western District of Texas
Waco Division

(Filed September 8, 1988)

APPELLANTS' PETITION FOR PANEL REHEARING

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW Appellants and request that the panel rehear or reconsider the above-numbered and styled appeal and would show the Court the following in support of this request:

I.

The Court's August 25, 1988 Summary Calendar opinion (per curiam) does not address the psychological damage done to the Willis heirs, potential attorneys and the courts which psychological damage and/or blockage prevented recognition of the massive "paper frauds" perpetrated on Appellants against whom legal segregation was practiced well into their middle sixties and/or fifties. The Court appears to impose upon the Appellants the same degree and quality of education and opportunity which would have been enjoyed by a free citizenry which factually is erroneous, especially coming out of a small, racially controlled county in Texas. It is essential to a proper determination of this case that the Court accept the uncontroverted proof of the foregoing. The record is froth with specific instances of general and specific denials of civil liberties to own, hold and/or inherit land in Freestone County, Texas. For your black Appellants, there is no magic involved in a post "Martin Luther King era" and Appellants specifically alleged and attempted to show with historical and current proof that the status quo relative to land ownership, holdings and inheritances maintains and that there has never been a movement to disestablish the system or its disproportionate impact on the Willises and other blacks. The maintenance of status quo and the psychological impasse created by the conditions alleged appear to be fact questions better left to a jury and questions which must be answered the same way they were answered in the landmark *Brown v. Board of Ed. of Topeka, Kansas* the effects of which were only introduced to the Freestone County, Texas population in 1974 as alleged in the First Amended Complaint. This was exactly twenty years

after the Supreme Court made its ruling. This in and of itself undermines the "Martin Luther King, Jr., era" language that the court uses to question what appears by years to be a tardy response to civil rights violations. The point is that in the real life of blacks, attitudes, social customs and codes, all based on hard core, die-hard racial considerations and the untreated psychological damage due to those oppressive conditions as alleged and uncontroverted yield this precise lawsuit and at this time of awakening and feeling free and that something can be done to right undeniable, egregious wrongs perpetrated when blacks were free game and maintained because blacks had no recourse.

II.

The Appellants have never conceded that their situation and the situation of blacks in Freestone County, Texas relative to land ownership, holdings and inheritance have improved. The Court abused its discretion in applying the concessions made in *Cross v. Lucious* to this case and, such a finding of a "better situation" concession is clearly erroneous. Again, blacks do not find the "post civil rights" era as accomodating as whites and, again, the standard to judge the blacks by is not created by victims who are themselves black with an understanding of the psychological barriers created as alleged.

III.

It is a clear and convincing fact that no attorney would take or allege the First Amended Complaint. There is no controverting evidence to suggest otherwise. This fact has to loom heavy in any determination as to

whether the Willises were dilatory under the law or, in equity.

Respectfully submitted,

HILL HICKS COLLINS
Attorneys and Counselors at Law

By: /s/ DONALD W. HICKS, SR.
Donald W. Hicks, Sr.
Bard Card No. 09575800

1201 Main Street
ONE MAIN PLACE
Suite 1530
Dallas, Texas 75202
Telephone No. (214) 744-0255

CERTIFICATE OF SERVICE (Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

CIVIL ACTION NO. W-84-CA-112

ESTATE OF ANDERSON WILLIS, ET AL.,
Plaintiffs,

v.

ESTATE OF JOHN RILEY, ET AL.,
Defendants.

(Filed August 28, 1987)

NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

ESTATE OF ANDERSON WILLIS, ET AL., Plaintiffs in the above-entitled and numbered case hereby give notice of their desire to appeal to the 5th Circuit Court of Appeals, from the judgment in this cause entered on the 7th day of August, 1987, granting the Defendants' Motion to Dismiss.

Respectfully submitted,

HILL HICKS COLLINS
Attorneys and Counselors at Law

By: /s/ DONALD W. HICKS, SR.
Donald W. Hicks, Sr.
Donald W. Hill
One Main Place - Suite 1530
1201 Main Street
Dallas, Texas 75202
Telephone No. (214) 744-0255

CERTIFICATE OF SERVICE (Omitted)

APPENDIX "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

Civil Action No. W-84-CA-112

ESTATE OF ANDERSON WILLIS, ET AL.,
Plaintiffs,

v.

ESTATE OF JOHN RILEY, ET AL.,
Defendants.

(Filed June 15, 1987)

PLAINTIFFS' RESPONSE TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, above-listed and named, submit herewith this their Response to Defendant's (Mattie K. Carter Trust) Motion for Summary Judgment pursuant to Rule 56c, Federal Rules of Civil Procedure, and would show:

1a. Plaintiffs herein named, based on the pleadings, affidavits, and depositions of parties, expert interviews, opinions, reports, maps and surveys, and other evidence produced during discovery, allege that there are genuine issues as to many material facts and that the Plaintiffs, and each of them named herein, are entitled to a trial on the merits of their civil action and that no Defendant is entitled to judgment as a matter of law.

1b. In aid of this response, Plaintiffs incorporate by reference as if fully set forth verbatim their May 18, 1987, Supplemental Response to Defendants' Rule 12(b) Motions and Motions for Sanctions Under Rule 8(a) and accompanying exhibits in support thereof and their First Amended Complaint. That response and complaint covers most of the assertions made in the Motion for Summary Judgment filed by Defendant Mattie K. Carter, Trust. In particular, the exhibits in support of Plaintiffs Supplemental Response (Exhibit 20) fill in the specifics relative to Defendant Mattie K. Carter, Trust, e.g., there is no beginning for Defendant's ownership interest. Plaintiffs alleged that the explanation for this was that Defendant's predecessors in title, interest, or office directly participated in the unconstitutional, racially motivated system of land divestment. Defendant purportedly obtained title to Plaintiffs' land from "SOLOMON". No Solomons ever lived on, owned or claimed Plaintiffs land. Plaintiffs know and knew the Solomons who were also black but who lived on land adjacent to and above the Acreage and referred to in the black community and known in the Willis family history of the Acreage and land surrounding the Acreage as the "Solomon Bottom". Plaintiffs asserted that, based on the system alleged throughout their First Amended Complaint and Supplemental Response that Defendant and/or its predecessor in title, interest and/or office relied on the complained of system of divestment to protect its fraudulent claim of ownership through "SOLOMON" until the period of limitation expired beyond which Plaintiffs' interest would be foreclosed. Being white and of economic substance in the Freestone County System, the County knowingly protected this Defendant's and/or its predecessors' activity.

2. *THE LAND DIVESTMENT SYSTEM.* Plaintiffs have alleged intentional, constitutional deprivations of Federal civil rights to own, hold, and/or inherit land in the ex-Confederate, slave State, Texas. "But for": (1) a self-sealing, self-executing, self-concealing, racially dual system of citizenship intentionally maintained by Freestone County, Texas through law and/or custom; (2) Ku Klux Klan and/or white hate group terrorism and purpose intentionally directed against Plaintiffs and their class based on race and/or association; (3) fraudulent recordations affecting land and absolute absence of notice and opportunity to defend against same, which recordations and lack of notice and opportunity to defend were specifically established for and directed toward Black landholders and were procedurally and substantively enhanced and/or encouraged by, among other things, Freestone County's racially dual recordation, notice and/or law enforcement systems; and (4) Defendants' and/or their predecessors in title's active concealment of material, critical facts necessary to bring or timely discover this particular civil action, Plaintiffs would not have suffered those constitutional deprivations. Plaintiffs contend that intentionally dual, race conscious, legal and customary systems of recordation and notice practice employed by Freestone County, Texas in an institutional sense have been employed to intentionally deprive and/or aid and abet private citizens, including Defendant Mattie K. Carter, Trust and its predecessors, in unconstitutionally depriving Plaintiffs of their rights to own, hold and inherit land based solely on Plaintiffs race and previous condition of servitude. "But for" those racially based recordations, notice and law enforcement systems, Plaintiffs would have owned, held, and been able to pass on or inherit and affirmatively deal with the land sought

to be recovered as a remedy herein. Freestone County, Texas thus was and is the "moving force" behind the complained of deprivations and the *sine qua non* for Defendant Mattie K. Carter, Trust's racially, discriminatory actions taken against Plaintiffs and the loss of the Acreage.

3. There exists genuine factual issues as to whether Plaintiffs, through the exercise of "due diligence", would have discovered, in time to overcome the various statutes of limitations posed as affirmative defenses against them adequate grounds for filing the instant civil action. "Due diligence" lacks a precise definition and refers to a *"fact-specific judgment on a case by case basis"* and the facts of this case are *sui generis* based solely on the impermissible consideration of Plaintiffs' race and previous and continuing, extraordinary condition of servitude.

4. Plaintiffs allege that the system of two societies, one white and one Black, was extraordinarily self-executing, self-sealing and self-concealing. When combined with Defendant Mattie K. Carter Trust's and other individual Defendants' affirmative fraudulent concealments and Freestone County's affirmative enhancement, encouragement and perpetuation of same through its dual, racial systems of recordation, and the extraordinary condition of servitude forming the basis of Plaintiffs' complaint, that system was calculated to hide and did hide the critical facts necessary to bring the instant civil action. The "legal and practical effect" of this sort of extraordinary, self-sealing, self-executing, and self-concealing condition of servitude was to effectively close the courthouse door to Plaintiffs and all potential Plaintiffs in Plaintiffs' class. Therefore, it is of little significance whether Defendants had or had not also concealed their identity or the fact

of injury or the fact that they never had good title. The wrongs complained of herein were not merely "self-concealing," rather, that concealment went to critical elements attending the particular causes of action alleged in this civil action.

5. In view of the foregoing, Plaintiffs are entitled to proceed to trial on the merits of their civil action. In support of this response, Plaintiffs rely on the contentions in Plaintiffs' First Amended Complaint which are based on facts established by: (1) the deposition testimonies of record by way of Plaintiffs' Response to Defendants' 12(b) and 8(a) Motions of Chavous Willis, Ezra Lean Willis, Bessie Mae Norris, Ola Mae Fantroy and A. V. Johnson; (2) affidavits by various family members, affirming the First Amended Complaint; (3) statements in the learned treatises and commercial publications accompanying the aforestated Plaintiffs' Supplemental Response to the extent relied upon by Dr. Linda Watson and/or Dr. Richard Seltzer relating to subjects of relevant history and the specific of this civil action, and/or, to the extent relied upon by the public or persons in their particular occupations or in the area of general and/or Black history and civil rights; (4) a partial abstract of title covering the acreage requested as a remedy to the violations alleged already on file; (5) land survey maps, the originals of which are already on file in this civil action; (6) documents from the Spanish Archives of the General Land Office of the State of Texas and Nachodochez and Anderson Counties; (7) live testimony and/or written statements and accounts from other Blacks similarly situated or as disclosed in articles concerning the condition of Blacks relative to their ability to own, hold or inherit land in Texas or relative to Texas'

reputation as to events of general and specific history and/or customs specially relative to Blacks, affecting land in Texas; and (8) the analysis of the "insidious" recordation, notice and law enforcement laws, customs, codes, and traditions that have affirmatively encouraged, enhanced, aided and abetted private individuals in unconstitutionally divesting Plaintiffs of their land or destroying their civil rights to own, hold or inherit that land as well as in concealing Plaintiffs' causes of action.

6. No "curative" proceedings were ever undertaken to clear chain of Title in the Acreage. No demand was ever made by and/or of the Defendants or their predecessors in title that all muniments of title"—i.e., all the original deeds or other instruments upon which title depended—be produced. Indeed,

* * *

customs of Freestone County, Texas relative to land in, for example, intentionally refusing or failing to record or recognize the extent of Anderson Willis' land holdings; refusing or failing to give Anderson Willis and other Blacks notice of litigation affecting "record title" to the Acreage; intentionally refusing or failing to afford protection against violence brought on by attempts to resist whites who wanted the Acreage and, in general, valuable property; refusal to allow blacks in and around the areas of recordation for sustained and prolonged periods critical to early discovery and relative to the various schemes of divestment; failing or refusing to disestablish the racially dual system and its effects; and refusing or failing to otherwise record or recognize statements, memorials, and/or other muniments of title affecting land ownership and/or inherit-

ances, all being executed as policy statements or decisions officially adopted and promulgated by Freestone County deed and tax departments, and probate system, *Plaintiffs' land would not have been unconstitutionally taken by strangers and/or fictitious persons in the claim of title.* Plaintiffs further claim that the constitutional deprivations of due process and equal protection of the laws and customs are visited pursuant to Defendant Freestone County's governmental customs that created and continue to maintain rather than disestablish double standards based on race, even though such customs might not have received formal approval in recent years through the bodies' official decision-making channels because the institutional practices of Freestone County, Texas and that of its employees, of denying access to the foregoing record systems, thus allowing strangers to steal their land with impunity and the protection of law and/or custom, are so permanent and well settled as to constitute a 'custom or usage' with the force of law. *See generally, Monell v. New York City Department of Social Services,* 436 U.S. 658, 690-91 (1978); *Bennett v. The City of Slidell,* 728 F.2d 762 (5th Cir. 1984), *on rehearing aff'd in part and rev'd in part,* 735 F.2d 861 (1984); *Webster v. The City of Houston,* 735 F.2d 838 (5th Cir. 1984), *aff'd in part, rev'd in part and remanded,* 739 F.2d 993 (1984); *Languirand v. Hayden,* 717 F.2d 220 (5th Cir. 1983); *Garris v. Rowland,* 678 F.2d 1264 (5th Cir. 1982); *Turpin v. Mailet,* 619 F.2d 196 (5th Cir. 1980).

10. The race and previous condition of servitude of ex-slave Anderson Willis and your Plaintiffs are at the core of this civil action and are the affirmative link to all unconstitutional actions and inactions intentionally directed at Plaintiffs and their class from an institutional

sense as far as Freestone County is concerned and relative to private citizens' actions.

11. Although the various limitations periods applicable to "actions involving title to land" are questions of state law, the time from which the periods commence is a matter of federal law. *E.g., United Klans of America, v. McGovern,* 621 F.2d 152 (5th Cir. 1980); *McWilliams v. Escambia County School Bd.,* 658 F.2d 326 (5th Cir. 1981); *Miller v. Smith,* 431 F.Supp. 821 (N.D. Tex. 1977). Controlling limitations periods for the causes of action under Sections 1981 and 1983 are ordinarily the most appropriate ones provided by state law. *Johnson v. Railway Exp. Agency, Inc.,* 421 U.S. 454 (1975); *Whatley v. Department of Ed.,* 673 F.2d 873 (5th Cir. 1982), *rehearing denied,* 679 F.2d 253; *Gonzalez v. Firestone Tire & Rubber Co.,* 610 F.2d 241 (5th Cir. 1980) *on remand,* 512 F.Supp. 1101 (E.D. Tex. 1981). Except that consideration of state law may be displaced where their application would be inconsistent with the federal policy underlying the cause of action under consideration. *Johnson v. Railway Exp. Agency, Inc.,* 421 U.S. 454 (1975).

Further, Plaintiffs' failure to file their claims prior to this civil action was not inexcusable delay, especially where any prejudice to Defendants by Plaintiffs delay in bringing judicial action cannot be attributed to Plaintiffs but rather to the Defendants and/or their predecessors in title and/or office. *E.g., Howard v. Roadway Exp., Inc.,* 726 F.2d 1529 (11th Cir. 1984).

12. The main goal of Section 1983 was to override the corrupting influence of the Ku Klux Klan, other who hated blacks (especially landholding blacks), and

their sympathizers *on the government and law enforcement* agencies of the southern states and one strong motive behind its enactment was great Congressional concern that the *state courts had been deficient in protecting federal rights. Allen v. McCurry,* 449 U.S. 90, 101 S. Ct. 411 (1980). *Burnett v. Grahan,* 104 S. Ct. 2924 (1984) (goals of reconstruction era civil rights statutes are compensation of persons whose civil rights have been violated and prevention of abuse of state power). Although "adequate in theory", the State remedy for Blacks relative to issue of land ownership, holdings and inheritance, was not available in practice. To this extent, Congress wanted to provide a remedy in Federal Courts supplementary to any remedy any State might pretend to have. *See e.g., McNeese v. Board of Ed. for Community Unit School Dist. 187, Cahokia, Ill.,* 373 U.S. 668 (1963) (purposes of § 1983 were to override the results of the insidious laws, state acts, customs, traditions, codes and institutions peculiar to or having a peculiarly disparate impact on Plaintiffs and their class due to their race of previous condition of servitude). *Accord, Moreno v. Henckel,* 431 F.2d 1299 (5th Cir. 1970). In enacting section 1983 (the Civil Rights of 1871), Congress had been especially concerned with murder, whippings, lynchings and "banishings," and that statutory remedy was meant to restore peace and "justice". *Jones v. Pruitt & Mauldin,* 763 F.2d 1250 (11th Cir. 1985), *rehearing denied,* 772 F.2d 918 (11th Cir. 1985) (Section 1983 was intended to grant broad civil right of redress to any person victimized by an abuse of state power which deprived him of federally secured rights). (Emphasis supplied.) *Accord, e.g., Golden v. Biscayne Bay Yacht Club,* 530 F.2d 16 (5th Cir. 1976), *cert.*

denied, 429 U.S. 872 (1976) (section 1983 "preserves and enforces" as against state action, rights, privileges and immunities secured by the Constitution and laws).

13. Section 1981 applies to all types of racial discrimination, public or private. *Taylor v. Jones,* 653 F.2d 1193 (8th Cir. 1981). A claim that county official acting under color of law and the County government as an institution refused to perform acts (*e.g.*, failure or refusal to record full extent of land ownership in the tax department, even discretionary ones, combined with Defendant's fraudulent statements of derivation of title which fraudulent statement was protected by the "System of Divestment", and solely on the basis of Plaintiffs' race, states a cause of action under 42 U.S.C. § 1981. *Jafree v. Barber,* 689 F.2d 640 (7th Cir. 1982). (a) In order to demonstrate a violation of § 1981, it is only necessary that the Plaintiffs show that they were unlawfully denied, by the Defendants, one of the rights protected by that section. *Vietnamese Fishermen's Ass'n. v. Knights of Klu Klux Klan,* 518 F.Supp. 993 (S.D. Tex. 1981). (b) *Gordon v. City Cartersville,* 522 F. Supp. 753 (N.D. Ga. 1981) (where racial discrimination motivated by anti-black feeling is directed against whites, said whites may recover under § 1981). (c) *Vaughn v. Pool Offshore Co., a Div. of Pool Co. of Texas,* 683 F.2d 922 (5th Cir. 1982) (must not only prove disparate and differential impact on persons but also prove governmental act or, in adopting or employing challenged practices or undertaking the challenged action, intended to treat similarly situated persons differently on basis of race); *Castaneda v. Pickard,* 648 F.2d 989 (5th Cir. 1981); *Vasquez v. McAllen Bag & Supply Co.,* 660 F.2d 686 (5th Cir. 1981) *cert. denied* 458 U.S. 1122

(1981) (under § 1981 necessary to prove discriminatory intent).

14. In addition to the foregoing, Plaintiffs allege, *inter alia,* that they are allowed to maintain their civil action based on the following racial practices: (a) the "tracking" of ex-slaves and free blacks on the county records with "FREEDMEN OWNERSHIPS RECORDS" or other institutional indications for blacks by the Deed Records and Tax Office with no affirmative effort to disestablish the foreseeable effects of those racially dual aspects (b) the County's custom of refusing admittance of Blacks to the areas containing the tax and/or deed records necessary to protect them from private fraudulent conspiracies and/or, of giving and certifying false information relative to same and for the benefit of Defendants, their predecessors in title, interest and/or office and based solely on Plaintiffs race, previous condition of servitude and associational preference, (c) the certifying that Plaintiffs and/or their ancestors were duly notified of crucial lawsuits involving the land when, in fact, Plaintiffs were not so notified, (d) the establishment of "phony" Mexican Land Grants to apply to Black ownership without Freestone County blacks being allowed an opportunity to participate similar to whites who participated and kept their land, and (e) the custom of banishing blacks and those associated with blacks from Freestone County and keeping said exiles out by terrorism, which was enforced, enhanced and participated in by the Freestone County government, until the Texas period of limitations on trying title to land expired. Freestone County has done nothing to affirmatively disestablish the foregoing system of laws, codes, customs and traditions and their effects on blacks relative to blacks' ability to own, hold and inherit land.

HISTORIC FACT ALLEGATIONS RELATIVE TO ALL DEFENDANTS INCLUDING MATTIE K. CARTER TRUST

15. The history of the condition of Blacks in Texas relative to their inability to hold property based solely on their race and previous condition of servitude was combined with fraudulent and concealed real property transactions under color of state custom and law and "terrorism." This system of divestment and "terrorism" was intentionally established by local government officials through direct involvement or through knowing acquiescense and through the administering of laws and customs specifically directed at the recently freed slaves and their descendants and those associated with them. Freestone County, Texas thus was and is the "moving force" behind the complained of deprivations and the *sine qua non* for private, racially, discriminatory actions taken against Plaintiffs and the loss of the Acreage.

16. This civil rights action for damages and injunctive and declaratory relief is brought on behalf of Plaintiffs, the Estate of Anderson Willis, Deceased, and his heirs, which *heirs are presently denied the right to inherit the "Acreage"* herein below described based on traditional and contemporary intentional discriminatory treatment, legal and customary, in recordation, civil rights enforcement, judicial and extra-judicial foreclosure, and relative to basic, minimum civil liberties consistent with equal citizenship and necessary to protect Plaintiffs' land holdings. Freestone County conditions, laws and customs intentionally made, perpetrated and encouraged private actions and inspired illegal conduct through dual racial policy, practice and custom. Freestone County, Texas

thus was and is the "moving force" behind the complained of deprivations and the *sine qua non* for private, racially discriminatory actions taken against Plaintiffs and their predecessors in interest and the loss of the Acreage.

17. The system of two societies, one white and one Black, was extraordinarily self-executing, self-sealing and self-concealing. When combined with individual Defendants' affirmative fraudulent concealments and acts of violence and Freestone County's affirmative enhancement, encouragement and perpetuation of same through its dual, racial systems of recordation, notice, judicial involvement, and law enforcement, there was continued and coated an extraordinary condition of servitude relative to blacks' ability to own, hold or inherit land. The condition was conceptually, very close to the requirements during slavery that slaves could not own, hold or inherit land. These facts, circumstances and conditions were intended to be extraordinary and self-sealing, self-executing, and self-concealing for a period of time necessary to bar, under law and remedy relative to the Acreage.

18. Plaintiffs alleged that they have been intentionally denied "fundamental" rights to life, liberty and property guaranteed in the United States Constitution based on their race and previous condition of servitude (incidents and badges of slavery).

19. The series of events leading to and since this civil action were not misfortunate and unintended but were and are a pattern and routine policy and practice directed at Plaintiffs' race. Said pattern, policy and practice are more than bare violations but are part of an aggravating circumstance relative to blacks' ability to own, hold and/or inherit land in Texas. Further, the

natural, probable and foreseeable result of enforcing racially dual systems of recordation, notice and law enforcement and not protecting Plaintiffs' race from Klan and white hate activity was to cause land holdings in Freestone County and the whole of Texas to shift by fraud and terror from blacks to mostly whites and hence, to increase or perpetuate the condition of servitude, i.e., slaves could not hold, own or inherit land. The county officials acted against the Plaintiffs due to *de jure* and *de facto* racial classifications that had and continue to have reasonably foreseeable discriminatory effect and were customs and policies applied and currently applied in an intentionally, discriminatory manner.

WHEREFORE, PREMISES CONSIDERED, Defendants' Motions for Summary Judgment should be denied in all respects.

Respectfully submitted,

Attorneys for PLAINTIFFS

HILL HICKS COLLINS
Attorneys and Counselors at Law
Renaissance Place
714 Jackson Street, Ste. 530
Dallas, Texas 75202

By: /s/ DONALD W. HICKS, SR.
Donald W. Hicks, Sr.

By: /s/ DONALD W. HILL
Donald W. Hill

CERTIFICATE OF SERVICE (Omitted)

APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

CIVIL ACTION NO. W-84-CA-112

ESTATE OF ANDERSON WILLIS,
DECEASED, ET AL.,
Plaintiffs,

v.

ESTATE OF JOHN RILEY, DECEASED, ET AL.,
Defendants.

(Filed May 18, 1987)

PLAINTIFFS' SUPPLEMENTAL RESPONSE TO DEFENDANTS' RULE 12(b) MOTIONS AND MOTION(S) FOR SANCTIONS UNDER RULE 8(a)

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, above-listed and named, submit this their supplemental response (including supporting exhibits and documentation) to Defendants' various motions to dismiss under Rule 12(b) and for sanctions for alleged pleading violations under Rule 8(a) and would show:

I.

INTRODUCTION

1. Plaintiffs herein named, based on the specific allegations in their first amended complaint, which allegations include relevant and material:

(a) archival indexes and "documents of title" from the General Land Office (Austin), and Nacogdoches County Spanish (Mexican) Land Grants documents and indexes, and Mexican Land Grant documents on file in Palestine, Anderson County, Texas;

(b) depositions of parties and other witnesses and expert testimony (to be presented at trial or hearing on Defendants' Rules 12(b) and 8(a) Motions);

(c) opinions, reports, maps, and surveys relative to Freestone County, Texas concerning the boundaries of or customs affecting the Acreage;

(d) articles, treatises, periodicals, newspaper clippings that disclose the continuing attitudes by the majority that historical society documents, statements regarding Freestone County arising before this civil action, as to the boundaries of or customs affecting the Acreage and other black folks land;

(e) and other evidence produced during discovery having equivalent circumstantial guarantees of trustworthiness and relevant to the issue of ownership of the Acreage and its loss by your Plaintiffs and their ancestors,

assert that they are entitled to a trial on the merits of their civil action and that no Defendant is entitled to judgment under Rules 12(b) and 8(a) of the Federal Rules of Civil Procedure.

2.a. Plaintiffs have specifically plead four major periods critical to Plaintiffs' First Amended Complaint:

(1) Mexican Colonization — antebellum period (describing the state of landownership, the process of perfecting an interest therein and the major actors and considerations that made up litigation which is a central and material point to Plaintiffs

(2) Post-slavery reconstruction

(3) the Black Code — Jim Crow era, and

(4) Civil Rights period (1940's - early 1970's)

2.b. Plaintiffs specifically request equitable remedies in seeking enforcement of their federal civil rights. Application of the "overtones of the periods" during which the Acreage was taken to this federal civil rights action is consistent with what Plaintiffs feel is the Court's obligation to apply strong equity principles in formulating remedial details.

2.c. Plaintiffs have specifically alleged intentional, constitutional deprivations of Federal and State civil rights to own, hold, and/or inherit land in the ex-Confederate, ex-slave State, Texas. Plaintiffs specifically alleged that "but for": (a) a self-sealing, self-executing, self-concealing, racially dual system of citizenship intentionally established and maintained by Freestone County, Texas, through law and/or custom, to deprive blacks of their land; (b) Ku Klux Klan and/or white hate group terrorism and purpose intentionally directed against Plaintiffs, their ancestors, and their class based on race and/or association; (c) fraudulent recordations affecting land

and absolute absence of notice and opportunity to defend against same, which fraudulent recordations and lack of notice and opportunity to defend were specifically directed toward Blacks to deprive them of the right to own, hold or inherit land, (Plaintiffs specifically alleged that Freestone County's racially dual recordation, notice and/or law enforcement systems directly, procedurally, and substantively enhanced and/or encouraged said fraud against Plaintiffs, their ancestors, and their race.); and (d) active concealment by Defendants and/or their predecessors intitle, interest or office of material, critical facts necessary to bring or timely discover this particular civil action, Plaintiffs would not have suffered the constitutional deprivations of rights essential to owning, holding and inheriting the "valuable and unique" subject matter of this civil action, i.e., 2,986 acres of land claimed to be "Willis land". (Plaintiffs contend that intentionally dual, race conscious, legal and customary systems of recordation, notice practice, and law enforcement employed by Freestone County, Texas in an institutional sense have been employed to intentionally deprive and/or aid and abet private citizens in unconstitutionally depriving Plaintiffs of their rights to own, hold and inherit land. Plaintiffs specifically alleged that "but for" those racially based recordation, notice and law enforcement systems, Plaintiffs would have owned, held, and been able to pass on or inherit and affirmatively deal with the land sought to be recovered as a remedy herein. Plaintiffs specifically alleged that Freestone County, Texas was and is the "moving force" behind the complained of deprivations and the *sine qua non* for private, racially discriminatory actions taken against Plaintiffs and for the loss of the Acreage. Plaintiffs specifically requested that, in analyzing

and ruling on issues in this civil action, this Court apply the strictest scrutiny available and in equity.

3. Plaintiffs specifically alleged Freestone County's legal and customary system of two societies, one white and one Black. Among other evidence, the deposition testimony, books, articles and treatises submitted in support of this response clearly prove the "two societies" aspect of Plaintiffs' First Amended Complaint, which aspect is a critical point to Plaintiffs' case. Plaintiffs specifically alleged that those systems were extraordinarily self-executing, self-sealing and self-concealing relative to the unconscionable taking complained of herein. Plaintiffs specifically alleged that said systems were intended to and did combine with the individual Defendants' affirmative fraudulent concealment (and/or those of their predecessors in title or interest). Plaintiffs specifically alleged Freestone County government's institutional, affirmative enhancement, encouragement and perpetuation of the foregoing private action through its legal and customary dual, racial systems of recordation, judicial involvement, and law enforcement. Plaintiffs specifically alleged an extraordinary condition of servitude impacting their ability to own, hold and inherit the Acreage. Plaintiffs specifically alleged that a combination of the foregoing formed a system that was calculated to hide and did hide the critical facts necessary to bring the instant civil action. Plaintiffs specifically alleged that the "legal and practical effect" of this sort of extraordinary, self-sealing, self-executing, and self-concealing, legal and customary condition of servitude was to effectively close the courthouse door to Plaintiffs and all potential Plaintiffs in Plaintiffs' class. Plaintiffs specifically link the complained of systems and conditions to unconstitutional

black land loss in Texas. Plaintiffs specifically alleged that it is of little significance whether Defendants had or had not also concealed their identity or the fact of injury. Plaintiffs specifically alleged that the wrongs complained of herein were not merely "self-concealing," rather, that that concealment went to critical elements attending the particular causes of action alleged in this civil action.

4. Plaintiffs specifically alleged that:

(a) No "curative" proceedings were ever undertaken to clear chain of Title in the Acreage.

(b) No demand was ever made by and/or of the Defendants or their predecessors in title that all muniments of title"—i.e., all the original deeds or other instruments upon which title depended—be produced and interpreted.

(c) None of the interlopers in the recorded chain of title ever investigated and appraised the title of their respective grantor's before completing their purchases.

When a purchaser of land accepts a deed of conveyance from his grantor, he assumes the "risk of loss" by reason of the assertion of outstanding claims against the land that are not "stale" or otherwise "time barred."

5. Plaintiffs specifically alleged that the Texas "recording acts" have always provided that, unless recorded, certain "instruments affecting land titles" shall be void as against subsequent purchasers of the land to be affected. Instruments affecting land titles include mexican land grants, marriage certificates, heirship affidavits, and statements otherwise concerning marriage, birth and death.

IDENTIFICATION OF PARTIES

6. This action was one brought by the sole heirs and descendents of ex-slave ANDERSON WILLIS, Deceased. There are three principal groups of Defendants:

(A) Individual Defendants who purportedly inherited or purchased the Acreage after the events forming the basis of Plaintiffs civil action had long since transpired;

(B) Freestone County, Texas and its Tax, Deed Records and Sheriff departments (referred to as County Defendant); and

(C) Dow Chemical Company (referred to as "Dow").

II.

BACKGROUND

7. Plaintiffs bring this civil action pursuant to the First, Thirteenth and Fourteenth Amendments to the United States Constitution and the Federal Civil Rights Act of 1861, 1866, 1870 and 1871 (42 U.S.C. 1981, 1982, 1983, 1985, 1986 and 1988). Moreover, this civil action arises out of the post Civil War acquisition by ex-slave Anderson Willis of several tracts of land totalling the Acreage (2,986 acres). Plaintiffs specifically complain that "but for" the laws and/or customs of Freestone County, Texas in, for example, intentionally refusing or failing to record, recognize, or acknowledge statements, memorials, and/or other muniments of title affecting land ownership and/or inheritances, all being executed as policy statements or decisions officially adopted and promulgated by Freestone County deed

records, tax and vital statistics (marriage, births and deaths departments, and probate system), Plaintiffs' land would not have been unconstitutionally taken by strangers or fictitious persons which the partial abstracts and archival information clearly show. Plaintiffs specifically claim that the United States constitutional deprivations of due process and equal protection of the laws and customs are visited on Plaintiffs pursuant to Defendant Freestone County's institutional customs that "die hard" and that created and continue to maintain double standards based on race, even though such customs might not have received formal approval in recent years through the various governmental bodies' official decision-making channels. Plaintiffs specifically alleged that the institutional practices of Freestone County, Texas and those of its employees, of "certifying no record" of Plaintiffs' and/or their ancestors' existence relative to certain parcels and amounts of the Acreage allowed and encouraged strangers to steal their land with impunity and the protection of law. Plaintiffs specifically allege that such institutional customs are so permanent and well settled against Plaintiffs class, blacks, as to constitute a 'custom or usage' with the force of law. *See generally, Monell v. New York City Department of Social Services,* 436 U.S. 658, 690-91 (1978); *Bennett v. The City of Slidell,* 728 F.2d 762 (5th Cir. 1984), *on rehearing aff'd in part and rev'd in part,* 735 F.2d 861 (1984); *Webster v. The City of Houston,* 735 F.2d 838 (5th Cir. 1984), *aff'd in part, rev'd in part and remanded,* 739 F.2d 993 (1984); *Languirand v. Hayden,* 717 F.2d 220 (5th Cir. 1983); *Garris v. Rowland,* 678 F.2d 1264 (5th Cir. 1982); *Turpin v. Mailet,* 619 F.2d 196 (5th Cir. 1980).

8. Anderson Willis' race and previous condition of servitude and Plaintiffs' race and descendancy are speci-

fically alleged to be at the core of this civil action and are the affirmative links to all unconstitutional actions and inactions intentionally directed at Plaintiffs and their class from an institutional sense as far as Freestone County is concerned and relative to private citizens' actions as far as Defendants and their predecessors in title, interest or office are concerned.

9. Basic to understanding Plaintiffs' First Amended Complaint is an acknowledgement or evidence that the most enduring post Civil War issues involved questions of black status relative to land.[1]

10.a. The Fourteenth Amendment to the United States Constitution entitles Plaintiffs to expect equal protection of the laws of Texas and to due process under the law relative to life, liberty and property.

10.b. The Thirteenth Amendment of course freed blacks from slavery and its incident and badges, the most relevant of said incidents and badges are that slaves could not own, hold or inherit property, especially real property. The Plaintiffs specifically allege the schemes and attitudes that justified slavery remained after the Thirteenth Amendment and continue now. Plaintiffs specifically alleged that their inability to own, hold and inherit land in Texas is premised on the same schemes and attitudes and are the reason for their loss of the Acreage, i.e. their inability to own, hold and inherit the land are incidents and badges of slavery.

---

1. Smallwood, James M., *Time of Hope, Time of Despair—Black Texans During Reconstruction* (1981), p. 27, Kennikat Press Corporation, Port Washington, New York, N.Y. "Many questions arose: How would Negroes respond to their new status? . . . . What degree of control over black labor, if any, would the national government allow native whites? Would blacks have the same political rights and legal status as whites? . . . . [Further], the masses of blacks advocated land redistribution and educational opportunity. . . ." *Ibid.*

10.c. The main goal of Section 1983 was to override the corrupting influence of the Ku Klux Klan and its sympathizers on the government and law enforcement agencies of the southern states and one strong motive behind its enactment was great Congressional concern that the state courts had been deficient in protecting federal rights. *Allen v. McCurry,* 449 U.S. 90, 101 S. Ct. 411 (1980). *Burnett v. Grahan,* 104 S. Ct. 2924 (1984) (goals of reconstruction era civil rights statutes are compensation of persons whose civil rights have been violated and prevention of abuse of state power). Although adequate in theory, the State remedy for Blacks relative to land ownership, was not available in practice. To this extent, Congress wanted to provide a remedy in Federal Courts supplementary to any remedy any State might have. *See e.g., McNeese v. Board of Ed. for Community Unit School Dist. 187, Cahokia, Ill.,* 373 U.S. 668 (1963) (purposes of § 1983 were to override the results of the insidious laws, state acts, customs, traditions, codes and institutions peculiar to or having a peculiarly disparate impact on Plaintiffs and their class due to their race of previous condition of servitude). *Accord, Moreno v. Henckel,* 431 F.2d 1299 (5th Cir. 1970). In enacting section 1983 (the Civil Rights of 1871), Congress had been especially concerned with murder, whippings, lynchings and "banishings", and that statutory remedy was meant to restore peace and "justice". *Jones v. Preuit & Mauldin,* 763 F.2d 1250 (11th Cir. 1985), *rehearing denied,* 772 F.2d 918 (11th Cir. 1985) (Section 1983 was intended to grant broad civil right of redress to any person victimized by an abuse of state power which deprived him of federally secured rights). (Emphasis supplied.) *Accord, e.g., Golden v. Biscayne Bay Yacht Club,* 530 F.2d 16 (5th Cir. 1976), *cert. denied,* 429

U.S. 872 (1976) (section 1983 "preserves and enforces" as against state action, rights, privileges and immunities secured by the Constitution and laws).

11. Section 1981 applies to all types of racial discrimination, public or private. *Taylor v. Jones,* 653 F.2d 1193 (8th Cir. 1981). Plaintiffs' specifically claim that Freestone county officials' acted and continue to act under color of law and/or to deprive Plaintiffs of the Acreage. Plaintiffs specifically alleged that the government knowingly and as an institution performed or refused to perform acts (*e.g.,* recordation of known fraudulent muniments of title and refusing to make proper tax records showing true extent of ownership) even discretionary ones, solely on the basis of Plaintiffs' race with the intent to take or cause to be taken Plaintiffs rights to own, hold or inherit the Acreage. Those allegations state a cause of action under 42 U.S.C. § 1981. *Jafree v. Barber,* 689 F.2d 640 (7th Cir. 1982). In order to demonstrate a violation of § 1981, it is only necessary that the Plaintiffs show that they were unlawfully denied, by the Defendants, one of the rights protected by that section, here, the right to own, hold and inherit land. *Vietnamese Fishermen's Ass'n v. Knights of Klu Klux Klan,* 518 F.Supp. 993 (S.D. Tex. 1981); *Gordon v. City Cartersville,* 522 F.Supp. 753 (N.D. Ga. 1981) (where racial discrimination motivated by anti-black feeling is directed against whites, said whites may recover under § 1981). *Vaughn v. Pool Offshore Co. a Div. of Pool Co. of Texas,* 683 F.2d 922 (5th Cir. 1982) (must not only prove disparate and differential impact on persons but also prove governmental act or in adopting or employing challenged practices or undertaking the challenged action, intended to treat similarly situated

persons differently on basis of race); *Castaneda v. Pickard,* 648 F.2d 989 (5th Cir. 1981); *Vasquez v. McAllen Bag & Supply Co.,* 660 F.2d 686 (5th Cir. 1981) *cert. denied* 458 U.S. 1122 (1981) (under § 1981 necessary to prove discriminatory intent).

12. Plaintiffs specifically allege the past and current practices of the county: (1) in not legally acknowledging the full extent of Anderson Willis' land holdings and the institutional policy of failing or refusing to record such relative to Plaintiffs' race (2) the "tracking" of ex-slaves and free blacks on the county records with "FREEDMEN OWNERSHIP RECORDS" or other institutional indications for blacks by the Tax Office and Deed Records offices (3) the County's custom of refusing admittance of Blacks to the area containing the tax and/or deed records and/or of giving and certifying false information relative to same to family members and for the benefit of Defendants and based solely on Plaintiffs race, previous condition of servitude and associational preference,[2] and (4) the custom of banishing Blacks and those associated with Blacks from certain areas in Freestone County and keeping said exiles out by terrorism or summary punishment. Plaintiffs specifically alleged that Freestone County intentionally maintained, enforced, enhanced and participated in the racially dual systems throughout all the critical periods of concealment to Plaintiffs detriment inasmuch as the Texas period of limitations on trying title to land has expired.

---

2. *Estate of Archibald Cornett, et al. v. Estate of M. D. Sikes, et al.,* U.S.D.C., E.D. TEX. (TYLER), C.A. No. TY-84-442-CA. This is a Panola County case involving the same issues relative to the union or marriage between an ex-confederate white soldier and an ex-slave.

Plaintiffs specifically allege critical facts concerning: (1) litigation in the Western District Court (Austin 1871), (2) asserted claims on the record in proceedings not on file in Freestone County, (3) false and fraudulent records as to Spanish/Mexican grants in Anderson County, Texas, (4) intentional failures or refusals to record total ownership in Anderson Willis as to various parcels of the Acreage. Plaintiffs specifically alleged that the foregoing critical facts were denied to Plaintiffs and their ancestors during the "critical periods" during which the Acreage was "systematically taken on the record" based on Freestone County law and/or customs which were and are unconstitutional. Plaintifls specifically alleged they did not have possession of the critical facts to the instant claims based on fraud coupled with civil rights violations until on or about June 19, 1984, at which time Plaintiffs filed their original complaint. Under, *Watts v. Graves,* 720 F.2d 1416, 1422-23 (5th Cir. 1983), Plaintiffs' civil action is timely and seasonable in all respects.

Plaintiffs specifically alleged that the record and information supporting their civil action was not available to Plaintiffs or their ancestors. These allegations clearly show a right to proceed herein. *United States v. Kubrick,* 444 U.S. 111, 122 (1979); *Watts v. Graves,* 720 F.2d 1416, 1422-23 (5th Cir. 1983); *Lavelle v. Listi,* 611 F.2d 1129 (5th Cir. 1980). The Court found that a "question of when (Plaintiffs') cause of action accrued and thus, when the statute of limitations expired presents issues making the granting of Defendants' Rule 12(b) motions inappropriate in this case. *Watts v. Graves,* 720 F.2d at 1423.

13. Although the various limitations periods applicable to "actions involving title to land" are questions of state law, the time from which the periods commence is a matter of federal law. *E.g., United Klans of America v. McGovern,* 621 F.2d 152 (5th Cir. 1980); *McWilliams v. Escambia County School Bd.,* 658 F.2d 326 (5th Cir. 1981); *Miller v. Smith,* 431 F.Supp. 821 (N.D. Tex. 1977). Controlling limitation periods for the causes of action under Sections 1981 and 1983 are ordinarily the most appropriate ones provided by state law. *Johnson v. Railway Exp. Agency, Inc.,* 421 U.S. 454 (1975); *Whatley v. Department of Ed.,* 673 F.2d 873 (5th Cir. 1982), *rehearing denied,* 679 F.2d 253; *Gonzalez v. Firestone Tire & Rubber Co.,* 610 F.2d 241 (5th Cir. 1980) *on remand,* 512 F.Supp. 1101 (E.D. Tex. 1981). Oppressive compliance with the statute of limitations pronouncements is not what the Supreme Court intended. Indeed, the Court did not reach the third step in the "three-step process in determining the rules of decision applicable to civil rights claims, that is, consideration of state law may be displaced where its application would be inconsistent with the federal policy underlying the cause of action under consideration. *Wilson v. Garcia,* 471 U.S. ____, 85 L.Ed.2d 254 (1985); *Johnson v. Railway Exp. Agency, Inc.,* 421 U.S. 454 (1975). Here, Plaintiffs have specifically alleged the federal policies intended by 42 U.S.C. § 1981 (that there be full and equal benefit of all laws and proceedings for the security of Plaintiffs' persons and property as is enjoyed by white citizens), § 1982 (that Plaintiffs . . . shall have the same right . . . as is enjoyed by white citizens . . . to inherit purchase, lease, sell, hold, and convey real and personal property), and § 1983 (that Defendants are liable for

acting under color of any statute, ordinance, regulations, custom, or usage of [the State of Texas] and subjecting or causing to be subjected, the Plaintiffs to the deprivation of the foregoing rights without absolutely no due process of law).

14. Plaintiffs' inability to know to file their claim before June 19, 1984, was not inexcusable delay, especially where any prejudice to Defendants by Plaintiffs delay in bringing judicial action cannot be attributed to Plaintiffs. *E.g., Howard v. Roadway Exp., Inc.*, 726 F.2d 1529 (11th Cir. 1984) The Court should construe Plaintiffs, First Amended Complaint in the light most favorable to them and take all the allegations contained therein as true. *Clark v. Amoco Production Co.*, 794 F.2d 967 (5th Cir. 1986). Even if it seems "almost a certainty to the Court that the facts alleged cannot be proved to support the legal claim", the claim may not be dismissed so long as the complaint states a claim. *Id.* at 970.

The Plaintiffs are specifically seeking equitable relief requesting that Plaintiffs be recognized under their complaint as the true owners of the Acreage and that the Defendants be required to deliver possession of the Acreage to Plaintiffs or that some equitable adjustments be made in ownership and possession or that some equitable remedy be fashioned to provide relief. Defendants cannot say Plaintiffs rested on their claim. Defendants cannot say they were prejudiced by the delay. Plaintiffs did not cause their own circumstances and in no way participated with Defendants. *Clark v. Amoco Production Co.*, 794 F.2d 967 (5th Cir. 1986).

15. Plaintiffs specifically alleged that the history of the condition of Blacks in Texas relative to their in-

ability to hold, own and inherit property based solely on their race and previous condition of servitude was combined with fraudulent and concealed real property transactions under color of state custom and law and "terrorism". Plaintiffs specifically alleged that this system of divestment and "terrorism" was intentionally established by local government through direct involvement or through that government's knowing acquiescence and through the administering of laws and customs specifically directed at the recently freed slaves and their descendants and those associated with them.[3] Those laws and customs were legal impediments to addressing "this particular civil action".

16. Plaintiffs conclude that the allegations in their complaint clearly show a condition and/or race specific system of intentional, constitutional deprivations of Federal civil rights to own, hold, and/or inherit land in the ex-Confederate, ex-slave State, Texas.

17. Plaintiffs specifically contend that intentional, dual, race conscious, legal and customary systems of recordation and notice practice employed by Freestone County, Texas in an institutional sense have intentionally deprived and/or aided and abetted private citizens in

---

3. Whites killed Negroes for the most trivial offenses . . . Anglos beat Blacks for almost any offense, including indications by freeman that they were in fact emancipated. Smallwood, James M., *Time of Hope, Time of Despair—Black Texans During Reconstruction* (1981), p. 33, Kennikat Press Corporation, Port Washington, New York, New York. An historian listed other reputedly assigned reasons for murder: freedman did not remove his hat when he passed him; negro would not allow himself to be whipped; freedman would not allow his wife to be whipped by a white man; he was carrying a letter to a Freedman's Bureau official; kill negroes to see them kick; wanted to thin out niggers a little; didn't hand over his money quick enough; wouldn't give up his whisky flask.

unconstitutionally depriving Plaintiffs of their rights to own, hold and inherit land. "But for" those racially based recordation and notice systems Plaintiffs would have owned, held and been able to pass on or inherit and affirmatively deal with the land sought to be recovered as a remedy herein. Plaintiffs specifically alleged Freestone County, Texas thus as the "moving force" behind the complained of deprivations and the *sine qua non* for private, racially, discriminatory actions taken against Plaintiffs and the loss of the Acreage.

18. This civil rights action for damages and injunctive and/or declaratory relief is brought on behalf of Plaintiffs, the Estate of ex-slave Anderson Willis, Deceased, and his heirs, the Plaintiffs herein, which heirs are "presently denied the right to inherit the Acreage" based on traditional and contemporary intentional discriminatory treatment, legal and customary, in recordation, civil rights enforcement, judicial and extra-judicial foreclosure, and relative to basic, minimum civil liberties consistent with equal citizenship and necessary to protect Plaintiffs' land holdings. The County of Freestone, State of Texas is a Defendant specifically for affirmatively allowing, encouraging, enhancing and participating in the conditions, laws and customs complained of through County agencies and arms (i.e., Freestone County Tax Assessor's Office, Sheriff's Office, Deed Records Office), prosecuting attorneys, their supervisors, and other elected officials of Freestone County that, as an interwoven unconstitutional system, intentionally made, perpetrated and encouraged private actions and inspired illegal conduct through its dual, racial policies, practices and customs.

19. Plaintiffs' specifically allege facts, circumstances and conditions, that show that, in equity, Plaintiffs' claims

are not otherwise time barred or frivolous. The facts, circumstances and conditions are specifically alleged to be intended by Defendants and/or their predecessors-in-title, interest or office, to be extraordinary and self-sealing, self-executing, and self-concealing for a period of time necessary to bar any law remedy relative to the Acreage.

20. Plaintiffs specifically alleged that the series of events leading to this civil action were not misfortunate and unintended but were a pattern and routine practice intentionally directed at Plaintiffs' race. Plaintiffs specifically allege that any wrongdoing by Defendants and/or their predecessors-in-title, office, or interest amounts to more than bare violations and are part of an aggravating circumstance that in equity should be addressed. Plaintiffs specifically alleged that the natural, probable and foreseeable result of enforcing a racially dual system of recordation, notice and law enforcement and not protecting Plaintiffs' race from Klan and white hate activity was to cause land holdings in Freestone County and the whole of Texas to shift by fraud and terror from Blacks to Whites and hence to increase or perpetuate the condition of servitude, e.g., slaves could not hold, own or inherit land and ex-slave Anderson Willis and his issue could not hold or own land and Plaintiffs cannot inherit same based on their race and ancestors' previous condition of servitude. Plaintiffs specifically alleged that the county officials individually and the government from an institutional sense acted against the Plaintiffs and their ancestors due to unconstitutional *de jure* and *de facto* racial classifications that had and continue to have reasonably foreseeable discriminatory effect and were customs and policies applied and currently applied in an intentionally, discriminatory manner. The issue of what race

of people currently own the land or substantial portions thereof is not a relevant issue. Rather, the facts, circumstances and conditions alleged and under which Plaintiffs and their predecessors lost the land and along with Plaintiffs' race at those times are the important inquiries herein.

21. In *Morris v. Alabama State Department of Industrial Relations,* 435 F.2d 137, 138 (5th Cir. 1970), Plaintiffs complaint charged in general that Defendants operated a federally funded employment training program in which Plaintiffs were trainees in a manner creating causes of action under the Fourteenth Amendment to the United States Constitution, federal statutes, and various contracts. Plaintiffs complaint, however, with specificity attacked the overall effectiveness of that employment training program by pointing to the disproportionately large number of Negro trainees, the "holding" status employed by the program, the termination of training allowances, and the discriminatory placing of Negro trainees in menial jobs. Further, Plaintiffs charged that the program and placement of trainees were unequal between whites and blacks. *Id.* at 138. The Fifth Circuit ruled in a *per curiam* decision that the specific allegations, if true, clearly stated a claim upon which relief can be granted. *Id.* Finally, the Fifth Circuit emphasized that the veracity of a complaint should not be determined at the pleading stage. *Id.* In the instant case, Plaintiffs' First Amended Complaint generally charges an iron-clad, state imposed system of land divestiture based on impermissible racial laws, codes, customs, rules, and/or traditions coupled with fraud by the Defendants and/or their predecessors-in-title, office, and/or interest. Plaintiffs First Amended Complaint, however, with specificity at-

tacks the overall unconstitutionality of Black land loss under the conditions alleged by pointing to: (a) the egregious irregularities openly known to whites but denied to Blacks based on their race and/or previous condition of servitude and the dual society, one black and the other white in Freestone County, Texas. In this regard, Plaintiffs have specifically alleged that the System of Recordation in Freestone County was employed to take their family's land. The System as alleged clearly shows that Blacks were traced and openly and easily identified through racial codes, classifications and distinctions when it came to land holdings. After the Civil War, Blacks were placed initially on a Freedmen's List of Property Owners and subsequently followed by the letter "c" for "colored" in the Tax Department of Freestone County. Deeds to Blacks in post-Civil War Texas contained similar references including "(col.)" which allowed the local authorities to keep track of Black land holdings. Forwarded herewith marked as Exhibits "57" incorporated herein for all purposes are copies of Tax records for Freestone County from 1872 to 1910. (b) The fact that every or substantially every case involving Plaintiffs, their ancestors and other Blacks contains Freestone County Sheriff's returns that are specifically alleged to be false and fraudulent based on Plaintiffs' race and/or previous condition of servitude and specifically alleged to be a device employed by Freestone County to intentionally aid and abet the private and public schemes to take Anderson Willis' land and to prevent his issue from inheriting that Acreage. The Court is hereby requested to take Judicial Notice of any and all Freestone County Sheriff's returns involving the Acreage and Plaintiffs. (c) The partial abstracts of the various parts of the Acreage which abstracts are incorporated herein.

22.a. Relative to the abstract, for example, Defendant Mattie K. Carter Trust, record "claim of title" to this Plaintiffs First Amended Complaint specifically alleges that the Defendant Trust and/or its predecessors-in-title, interest or office have never held legal title to Plaintiffs' land. Plaintiffs alleged that Defendants held control over the land through the use of the Deed Records, Tax and Sheriff's Departments and a "good old boy" system based on racial hatred which System sustained any complaints and processes, no matter how ridiculous, against "uninformed, unnoticed," and Blacks relative to land ownership, holdings and inheritance. Plaintiffs specifically allege, for instance, there is no beginning point for Defendant's title, Plaintiffs paid taxes on this land up through June 19, 1984, the Black person through whom this Defendant clams title is a stranger who never owned, claimed or lived on the Acreage, and Defendant and its predecessors-in-title, interest or office intentionally published and caused to be recorded false deeds and statements with the understanding that the Black Plaintiffs or their ancestors would not be able to find these critical facts out in time to contest the wrongs or if they did, the race conscious segregated county government would protect the claim of the whites as part of the fraudulent scheme to take land held by Blacks.

22.b. Plaintiffs conclude that the importation of State law to deny their claims would frustrate and interfere with the implementation of National policies. *DelCostello v. International Broth. of Teamsters,* 103 S. Ct. 2281, 2289 (1983). Further, Plaintiffs suggest to the Court that although State law is this Court's primary guide in this area, it is not, to be sure, the Court's exclusive guide. *Id.* Indeed, this is the very circumstance under which

cession that the complained of system had improved prior to June 19, 1984 and Plaintiffs' First Amended Complaint for newly named parties. In this regard and after preliminary inquiry, Plaintiffs initially named, *inter alia,* any and all other unknown and unnamed claimants of the Acreage. Plaintiffs subsequently identified the government as an institution, Dow Chemical and R. N. Compton as nameable parties.

26. Further, Plaintiffs First Amended Complaint presents a real, substantial controversy between parties having adverse legal interests, a dispute definite and concrete, not hypothetical or abstract. *Id.* at 158-59. The First Amended Complaint clearly states and shows that the County Defendant is presently continuing to dissuade and discourage Plaintiffs by assaulting its membership (head family researchers) with absolutely no remedy in the State judicial machinery and out and out crush any attempts to use state law trespass to try title to regain possession of the Acreage (conviction of family chairman for Criminal Trespass on the testimony of a stranger to the land while Defendants in this civil action made no complaint). *See* First Amended Complaint, pp. 42-43). The Fifth Circuit in *Cross v. Lucius,* concluded that a problem existed with the approach that "the sins of the fathers would not be visited upon the children". *Cross v. Lucius,* 713 F.2d at 155. Plaintiffs would urge the Court under the facts and circumstances plead herein not to allow the "sins of those fathers' Defendants' predecessors in title, interest or office to be visited upon the victim Plaintiffs." The Court in *Cross v. Lucius* only had the Plaintiffs' "inartfully drawn pleadings" to review. In this case, however, Plaintiffs have offered more than pleadings for review and in support of their claims. *Id.*

27. *Cross v. Lucius* did not involve "arising under" claims *per se*, rather, it only addressed 42 U.S.C. § 1983. This case, beyond Sections 1981, 1982, 1983, 1985, substantially involves pure violations of the 13th and 14th Amendments to the Constitution of the United States and Plaintiffs specifically request that this Court employ "strong and courageous equity" principles in what Plaintiffs believe is a real and continuing injury to their constitutional rights to own, hold and inherit land. Finally, and in response to the fact that Plaintiffs do not necessarily mention the current record holders through Plaintiffs' First Amended Complaint, *Cross v. Lucius* clearly shows that, if Defendants, their predecessors in interest, title and office were actively involved in the complained of acts, record owners of land (including their current assignees or grantees) are proper parties to a suit seeking as a remedy return of the Acreage currently owned on the record by said parties. *Id.* at 156.

28.a. The deposition testimony of Ola Mae Fantroy belies the assertions, express or implied, that Defendants and/or their predecessors in interest, title, and office never concealed or attempted to conceal major and critical facts to bring this particular civil action. Plaintiffs specifically alleged that the fraudulent use by the City of Fairfield of its black citizens' names to obtain federal money under the Urban Development Action Grants program shows, specifically, in contemporary terms, the custom of Freestone County in publishing falsehoods relative to and about blacks to obtain money and property without the blacks knowing anything about same until years later when, ostensibly nothing practical can be done.

28.b. Bessie Mae Norris testified during her deposition to the practice of how the Sheriff's departments of the

State statutes of limitations prove to be unsatisfactory vehicles for enforcement of federal law. *Id.* It is at least recognized that when the events alleged in the complaint, in equity, show that it is unconscionable to apply state limitation statutes, the Court can disregard those statutes. *Guaranty Trust Co. of New York v. York,* 326 U.S. 99, 111 (1945).

23.a. The United States Supreme Court cases styled *Hohri v. United States* and Docketed Nos. 86-510 and 86-298 more closely resemble Plaintiffs' case which is *sui generis. Hohri v. United States,* 782 F.2d 221 (D.C. Cir. 1986) *rehearing en banc denied,* 793 F.2d 304 (1986). *Hohri* was argued April 20, 1987 to the Court and involved our Japanese Americans who had land and businesses taken from them under a similar oppressive system wherein they had no adequate remedies at law and were placed in internment camps and where the government or its agencies actively and intentionally participated in the divestments. As here, the parties in that case argued the relevant history surrounding the complained of takings. The Court will presumtively render its opinion on the statute of limitations and laches defenses based on the foregoing facts and circumstances in in the near future according to the Clerk. The fact that the Court received the *Hohri* cases on *certiorari* clearly discloses that the statute of limitations and laches issues are not as clearly and definitively resolved or intended to cover all imaginable causes of actions, especially when said causes are grounded in the type of constitutionally repugnant activity alleged herein. Plaintiffs note that the *Hohri* Plaintiffs and/or their class had had an earlier hearing on their complaints that ended up with an adverse ruling in *Korematsu v. United States of America,* 323 U.S. 214 (1944).

23.b. Similar to Plaintiffs first amended complaint, Japanese American World War II internees and/or their representatives brought suit against the United States in *Hohri,* seeking money damages and a declaratory judgment on 22 claims, based upon a variety of constitutional violations, torts, and breach of contract and fiduciary duties. The United States District Court for the District of Columbia, Louis F. Oberdorfer, J., 586 F. Supp. 796, granted the Government's motion to dismiss, and plaintiffs appealed. The Court of Appeals, J. Skelly Wright, Circuit Judge, held *inter alia,* that allegations that the Government fraudulently concealed facts that there were no military necessities for internment program were sufficient to toll statute of limitation applicable to claims under the Fifth Amendment. *Hohri v. United States,* 782 F.2d at 251.

23.c. A majority of United States jurisdictions has held that a defendant's subsequent concealment of a fraud would toll the statute of limitations. *Id.* at 251; *see also Bailey v. Glover,* 88 U.S. (21 Wall.) 342, 348-49, 22 L.Ed. 636 (1875) (collecting cases). Not surprisingly, the Supreme Court has held that "[t]his equitable doctrine is read into every federal statute of limitation." *Holmberg v. Armbrecht,* 327 U.S. 392, 397, 66 S. Ct. 582, 585, 90 L.Ed. 743 (1946). Several federal Courts of Appeals have therefore held that fraudulent concealment by the United States will toll the statute of limitations. *See, e.g., Barrett v. United States,* 689 F.2d 324, 329-30 (2d Cir. 1982), cert. denied, 462 U.S. 1131, 103 S. Ct. 3111, 77 L.Ed.2d 1366 (1983); *Welcker v. United States,* 752 F.2d 1577, 1580 (Fed. Cir. 1985). See also *Japanese War Notes Claimants Ass'n of the Philippines, Inc. v. United States,* 178 Ct.

Cl. 630, 373 F.2d 356, 358-59, cert. denied, 389 U.S. 971, 88 S. Ct. 466, 19 L.Ed.2d 461 (1967).

23.d. In *Hohri,* the D. C. Circuit found that Defendants' acts of concealment combined with the totality of the circumstances against the Plaintiff victims became so egregious as to constitute one of those rare circumstances where estoppel of the government might be appropriate to toll the statute of limitations until a reasonable plaintiff operating under the impact of the conditions and circumstances could undo the effects of concealment. Congress provided and under the assumption that Congress did not intend for the County to abuse such statutes by engaging in conscious frauds and oppression ought to be subject to equitable measures deterrent of future fraud. At least, there are strong judicial suggestions in that direction. *Hohri v. United States,* 782 F.2d at 251.

23.e. Not every act of concealment will toll the statute; concealment must go to a critical element of defense attending each particular cause of action. *Id.*

24. In deciding a motion to dismiss on the pleadings for want of subject matter jurisdiction "the allegations of the complaint should be construed favorably to the pleader." *Scheuer v. Rhodes,* 416 U.S. 232, 236, 94 S. Ct. 1683, 1686, 40 L.Ed.2d 90 (1974). *See also Walker v. Jones,* 733 F.2d 923, 925-26 (D.C. Cir. 1984). The District Court, however, is not limited to the allegations of the complaint in deciding a Rule 12(b)(1) motion. In *Hohri,* the District Court properly relied on extra-pleading material in deciding the motion. 5 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1350 at 549-550 & n. 77 (1969 & 1985 Supp.) (collecting citations).

25. Defendants' *Cross v. Lucius,* 713 F.2d 153 (5th Cir. 1983), can be distinguished. In that case, Plaintiffs did not allege an affirmative link between alleged tortfeasors and their successors in interest and Plaintiffs' inability to pursue their claim or Plaintiffs' ignorance of their cause of action nor did Plaintiffs clearly set forth any legal barrier to timely bringing their action. *Id.* at 157. Plaintiffs have specifically alleged an affirmative link between all Defendants and/or their predecessors in title, interest or office and: (1) Plaintiffs inability to pursue their instant claim (2) Plaintiffs ignorance of their cause of action and (3) institutional barriers to timely bringing Plaintiffs' action which barriers were state imposed legal or customary barriers to adequate remedies. Plaintiffs' have specifically alleged that said barriers were intended under the unconstitutional system. Further, Plaintiffs in *Cross v. Lucius* did not allege that their mental incapacity was the result of any defendant's wrongful conduct. *Id.* at 157-58. In essence, Plaintiffs failed to allege facts, if true, which would toll the period of limitation. Here, Plaintiffs specifically alleged that unconstitutional county custom and/or local law prevented any attorneys ever retained from taking cognizance of or acting upon Plaintiffs' claims as set forth in their First Amended Complaint. Plaintiffs herein specifically allege that the Defendants, and/or their ancestors and/or predecessors in title, interest or office intentionally prevented the Plaintiffs from pursuing their claim and/or kept them in ignorance of their cause of action through the maintenance and participation in a self-executing, self-sealing and self-concealing racially, dual system of citizenship directed at Blacks and related to land, Blacks' ownership, holdings and inheritance of land. No where in Plaintiffs First Amended Complaint is there any con-

adjoining counties along with those of Freestone County placed she (a pregnant woman at the time who subsequently miscarried) and her husband in jail attempting to make the Norris' sign papers relative to land.

28.c. A. V. Johnson's testimony points out the system under which the Willises and all blacks were laboring relative to black's contesting the acts, deeds and words of Freestone County white citizens. Ezra Lean Harris Willis' deposition testimony combines with Mr. Johnson's testimony to show the psychological responses employed by blacks to survive their condition. Although she did not know it, Mrs. Willis' maiden name was used by Fairfield in applying for the foregoing grant.

28.d. Plaintiffs specifically alleged that their race's condition and circumstance in Freestone County, which condition was maintained by the local officials and institutions, caused them unconscionable and unconstitutional psychological prohibitions or bars to responding with the instant civil action for relief.

29. Plaintiffs assert that to dismiss their First Amended Complaint under Rules 12(b) and 8(a) under the facts, circumstances and conditions alleged would be to certify that County Defendants and private Defendans or their predecessors in title, interest or office could effect the most egregious sort of constitutional deprivations based on suspect racial classifications, codes, and customs, which deprivations go unpunished forever with no recognition of Plaintiffs rights to own, hold or inherit the land herein and based on said Defendants (or their predecessors) ability to control the circumstances and time under which the victim actually discovers or presents their claims.

30. In view of the foregoing, Plaintiffs are entitled to proceed to trial on the merits of their civil rights action. In support of this response, Plaintiffs incorporate by reference as if fully set forth the allegations and statements of Plaintiffs' First Amended Complaint, the contentions of which are based on facts established by:

(a) the deposition testimonies (exhibits herein) of Chavous Willis, Ezra Lean Willis, A. V. Johnson, Bessie Mae Norris, and Ola Mae Fantroy

(b) statements in learned treatises and commercial publications:

1. to the extent relied upon by civil rights experts, sociologists and psychologists and as those statements relate to subjects of relevant history and the specifics of this civil action, and/or

2. to the extent relied upon by the public or persons in their particular occupations or in the area of general and/or Black history and civil rights. Plaintiffs rely for all purposes on the evidence under FED.R.EVID. 803(1) (3), (13), (14), (16), (18), (19), (20), (21) and (24), and 804(b)(4)(5) appearing on pages 18 through 20 of Plaintiffs First Amended Complaint and as alleged throughout that complaint.

The treatises and commercial publications have been deposited with the Court, along with this first amended response.

(c) a partial abstract of title covering the acreage requested as a remedy to the violations alleged.

The abstracts speak for themselves and show open and accepted fraud and hardcore noncompliance with the United States constitution's standards on civil rights against Plaintiffs in Freestone County;

(d) land survey maps showing, inter alia, the metes and bounds by monuments and markers of the Acreage and the location thereon of Plaintiffs' family members and their operations which rise to a level quite above "squatting";

(e) documents and reference authorities from the General Land Office of the State of Texas that piece together the grand and fraudulent puzzle of how these Black Plaintiffs had their land taken;

(f) testimony to be offered at the hearing on this matter from other Blacks similarly situated or as disclosed in articles concerning the condition of Blacks relative to their ability to own, hold or inherit land in Texas or relative to Texas' reputation as to events of general and specific history in Texas involving Blacks' relation to land and to the Acreage; and

(g) the analysis of the "insidious" recordation laws, customs, codes, and traditions that have affirmatively encouraged, enhanced, aided and abetted private individuals in unconstitutionally divesting Plaintiffs of their land or destroying their civil rights to own, hold or inherit that land as well as in concealing Plaintiffs' causes of action.

31. In further support of this Response, Plaintiffs pray that the Court take Judicial Notice of the following:

a. That from 1861 through 1983, the Congress of the United States of America prepared, passed and continued, renewed and/or extended legislation which sole purpose was the elimination of racial distinctions, codes, customs and laws that discriminate against Plaintiffs and their class;

b. That from 1861 until 1983, Black people in Freestone County could not forcibly reclaim land or use self-help to reclaim or to exercise available state means of possessing, claiming and owning land that was forcefully taken and/or held by any white man claiming a superior right thereto;

c. That the records, if any, of the federal court and circuit in which this Court sits cannot find in its backlog of cases dating from 1861 through 1983 any suit wherein any black man or woman successfully gained ouster or brought reclamation actions against any white man or woman in Freestone County, Texas;

d. That there has been constant and substantial litigation relative to the citizenship status of Blacks as a class of Americans that has gone throughout the early 1980s;

e. That the Ku Klux Klan and white hate groups still exist. For example, the 1980 Fifth Circuit Court of Appeals case wherein the United Klans of America sued FBI agents for damages arising out of FBI's counter intelligence program designed to expose, disrupt and otherwise neutralize the Klan. *United Klans of America and Knights of the Ku Klux Klan, Inc. v. James L. McGovern, former special agent in charge, Burmingham office of Federal Bureau of Investigation, et al.*, 621 F.2d 152 (5th Cir. 1980). Attached hereto marked Exhibit "79" and incorporated herein for all purposes is the *Ku Klux Klan, Then and Now* (A compilation of white hate group activity directed toward Plaintiffs' class).

WHEREFORE, PREMISES CONSIDERED, Defendants' Motion to Dismiss and for sanctions should be denied in all respects.

Respectfully submitted,

Attorneys for PLAINTIFFS

Mr. Craig Washington
Mr. Sidney Braquet
WASHINGTON & RANDLE
1000 The Houston Building
2323 Caroline Street
Houston, Texas 77004-1081

HILL HICKS COLLINS
Attorneys and Counselors at Law
Renaissance Place
714 Jackson Street, Suite 530
Dallas, Texas 75202

By: /s/ DONALD W. HICKS, SR.
Donald W. Hicks, Sr.

By: /s/ DONALD W. HILL
Donald W. Hill

CERTIFICATE OF SERVICE (Omitted)

PLAINTIFFS' SUPPLEMENTAL RESPONSE TO DEFENDANTS' RULE 12(b) MOTIONS AND MOTION(S) FOR SANCTIONS UNDER RULE 8(a) EXHIBIT LIST AND DOCUMENTATION

I. PLAINTIFFS' GENERAL LAND OFFICE EXHIBITS (GLO)

1. James LaGrove Survey
2. Stephen Bynum Survey
3. Samuel Johnson Survey
4. H. B. Crawford Survey
5. Samuel Defir Survey
6. Francis Sadler Survey
7. John S. Wells Survey
8. R. N. Compton Survey
9. W. D. Harris Survey
10. Robert J. Carothers Survey
11. Thomas Doyne Survey
12. John C. Caddell Survey
13. John G. Cooper Survey
14. Thomas Davis Survey
15. Francis Jones Survey

II. TESTIMONIO OF PROCEEDINGS FILED IN ANDERSON COUNTY

16. Manuel Riondo Testimonio

III. ABSTRACTS

17. Abstract No. 595, F. Sadler Survey, 320 Acres
18. Abstract No. 126, R. J. Carothers Survey, 70 Acres
19. Abstract No. 125, R. J. Carothers Survey, 472.5 Acres
20. Abstract No. 345, Francis Jones Survey, 320 Acres
21. Abstract No. 196, Thomas Davis Survey, 128 Acres
22. Abstract No. 861, R. N. Compton Survey, 123.5 Acres
23. Abstract No. 613, T. R. Thurman Survey, 320 Acres
24. Abstract No. 337, Samuel Johnson Survey, 645 Acres
25. Abstract No. 181, Thomas Doyne Survey, 1,156 Acres
26. Abstract No. 119, J. C. Caddell Survey, 836 Acres

IV. SPANISH LAND GRANTS (Filed in Anderson County)

27. Petition to the Government, Book N, Page 407
28. Manuel Riondo's Patent
29. Mariano Riva Palacios' Patent
30. Power of Attorney given to Juan de los Santos by Simon Sanchez

31. Edward C. Harris Patent

32. Isaac Burnett Patent

33. Grant to John A. Box by Republic of Texas, Book 46, Page 114

34. Grant from Coahuila V. Texas to Philip Martin, Book C, Page 41

V. NATIONAL ARCHIVES EXHIBITS (Freestone County Archival)

35. U. S. District Court Law No. 1273

36. U. S. District Court Law No. 1274

37. U. S. District Court Law No. 1275

38. U. S. District Court Law No. 1276

39. U. S. District Court Law No. 1277

40. U. S. District Court Law No. 1278

41. U. S. District Court Law No. 1279

42. U. S. District Court Law No. 1280

43. U. S. District Court Law No. 1281

44. U. S. District Court Law No. 1282

45. U. S. District Court Law No. 1284

46. U. S. District Court Law No. 1285

47. U. S. District Court Law No. 1286

48. U. S. District Court Law No. 1755

49. U. S. District Court Law No. 1757

50. U. S. District Court Law No. 1759

51. U. S. District Court Law No. 1760

52. U. S. District Court Law No. 1761
53. U. S. District Court Law No. 1763
54. U. S. District Court Law No. 1764
55. U. S. District Court Law No. 1765
56. U. S. District Court Law No. 1767

VI. TAX RECORDS

57. Inclusive of the years 1872-1910

VII. MAPS

58. Map of Freestone County dated February 4, 1858
59. Map of Freestone County dated February 19, 1874
60. Map of Freestone County dated April 1888
61. Map, inclusive of all surveys, dated November 1983 through February 1984, Surveyor - Luther T. Fisher

VIII. DEPOSITIONS

62. Oral Deposition of Ola Mae Fantroy
63. Oral Deposition of A. V. Johnson
64. Oral Deposition of Ezra Mary Willis
65. Oral Deposition of Bessie Earl Norris
66. Oral Deposition of Chavous Willis

IX. BOOKS & MAGAZINE

67. *Crisis in Black and White* by Charles E. Silberman

68. *The Negro Pilgrimage in America* by C. Eric Lincoln

69. *Black Political Power in America* by Chuck Stone

70. *From Salvery to Freedom, History of Negro Americans* by John Hope Franklin

71. *Black Leaders, Texans for Their Times,* by Alwyn Bart & Robert A. Calvert

72. *Black Texans, A History of Negroes in Texas 1528-1971* by Alwyn Barr

73. *In the Matter of Color, Race and the American Legal Process: The Colonial Period* by A. Leon Higginbotham, Jr.

74. *The Accommodation* by Jim Schutze

75. *Before the Mayflower, A History of Black America* by Lerone Bennett, Jr.

76. *Eyes on the Prize* by Juan Williams

77. *The Crisis,* February 1986

78. *History of Freestone County, Texas* by the Freestone County Historical Commission

79. *Ku Klux Klan, Then and Now*

80. Video Tape of *Eyes on The Prize* (Awakenings — 1954-56), Episode 1

81. Video Tape of *Eyes on The Prize* (Fighting Back — 1957-62), Episode 2

82. Video Tape of *Eyes on The Prize* (Ain't Scared of Your Jail — 1960-61), Episode 3

83. Video Tape of *Eyes on The Prize* (No Easy Walk — 1962-66), Episode 4

84. Video Tape of *Eyes on The Prize* (Mississippi: Is This America — 1962-64) Episode 5

85. Video Tape of *Eyes on The Prize* (Bridge to Freedom — 1965), Episode 6

APPENDIX "E"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

CIVIL ACTION NO. W-84-CA-112

ESTATE OF ANDERSON WILLIS, ET AL.,
Plaintiffs,

v.

ESTATE OF JOHN RILEY, ET AL.,
Defendants.

(Filed October 6, 1986)

PLAINTIFFS' RESPONSE TO SHOW CAUSE ORDER

To The Honorable Judge of Said Court:

On September 23, 1986, the Court was not aware of any discovery herein since October 1985. On that date, the Court issued an Order requiring Plaintiffs to show written cause why their civil action should not be dismissed. The above-enumerated Plaintiffs, Estate of Anderson Willis, et al., by and through their attorneys of record, hereby files this their response to that Show Cause Order and would show the following:

I.

A. Plaintiffs have since October of 1985 begun and completed (July 23, 1986) a Certificate of Title. Currently, Plaintiffs are in the process of requesting certified

copies of any and all documents in that Certificate from the Freestone County Deed Records Department to present the Abstract necessary to this litigation. That Abstract involves a little over 1,100 individual transactions, and was necessary to the prosecution of the case to substantiate claims against additional parties and to show fraudulent dealing by defendants.

II.

As of June 24, 1986, Plaintiffs have had produced for the record, certified copies of documents located in the National Archives Center in Fort Worth, Texas. Those documents are 1800's litigation files not recorded in Freestone County, Texas. This was necessary to the prosecution of this case in that without this information it would be impossible to determine the "root" of title.

III.

From January to May 1986:

A. Plaintiffs researched in and received from the State of Texas General Land Office all prior maps on record relevant to the Acreage.

B. Plaintiffs researched and received Map(s) from the National Archives in Washington, D.C.

C. Plaintiffs are arranging for an attitudinal survey conducted specifically for this civil action.

D. To the extent the Tax Office is not required to keep records from 1935 back, Plaintiffs have had to research the Genealogical Records in Austin and Dallas, Texas.

E. Plaintiffs have had sessions with a psychologist to show, *inter alia,* the psychological impact that has been caused by this civil action and to support Plaintiffs' *Monell* custom arguments. See *Monell v. New York City Department of Social Services,* 436 U.S. 658, 690-91 (1978) ("But for" the racially dual system of law enforcement and system of recordation, Plaintiffs would not have lost the Acreage *and* Plaintiffs injury would have been discovered). *See e.g., United Klans of America, et al. v. McGovern,* 621 F.2d 152, 153 (5th Cir. 1980) (fraudulent concealment tools the Statute of Limitations).

F. Plaintiffs have conducted numerous witness interviews to gather information relevant to this civil action.

G. Plaintiffs have researched white hate groups and the general and specific history of Plaintiffs and their Class relative to same at the Schomberg Center for Research in Black Culture (New York).

The foregoing were necessary to the prosecution of this case in that they were preliminary to any substantive discovery requests from Defendants in the form of interrogatories, request for production and admissions.

IV.

Plaintiffs plan to join additional parties as a result of the abstracting of title referenced herein. Such joinder should be completed within the next sixty (60) day period. Further, the Plaintiffs have employed additional counsel in order to assist in the prosecution of this case. Plaintiffs felt that additional counsel was necessary because of the complexity of the issues presented and to bring this matter to trial. Plaintiffs have retained State

Senator Craig Washington of Houston, Texas, for such purposes.

V.

Plaintiffs and their counsel have exercised due diligence in the prosecution of this case, have not been dilitory and have conducted said prosecution in good faith. Plaintiffs, upon the conclusion of discovery, are ready to proceed to trial.

WHEREFORE, PREMISES CONSIDERED, and in light of the fact that good cause has been shown why this civil action should not be dismissed, Plaintiffs request the Court to issue a Trial Scheduling and Setting Order and/or a Pre-Trial Status Conference.

Respectfully submitted,

HILL HICKS COLLINS
Attorneys and Counselors at Law

By: /s/ DONALD W. HICKS, SR.
Donald W. Hicks, Sr.
Renaissance Place — Suite 530
714 Jackson Street
Dallas, Texas 75202
Telephone No. (214) 744-0255

VERIFICATION

STATE OF TEXAS §

COUNTY OF DALLAS §

Before me on this 3rd day of October, 1986, personally appeared DONALD W. HICKS, SR. who upon oath did state and affirm the following:

"My name is DONALD W. HICKS, SR. and I am one of the attorneys of record in the above-entitled and numbered cause and do state and affirm that the foregoing Plaintiffs' Response to Show Cause Order are true and correct to the best of my information and belief".

/s/ DONALD W. HICKS, SR.
Donald W. Hicks, Sr.

SUBSCRIBED AND SWORN TO BEFORE ME on the 3rd day of October, 1986, to certify which witness my hand and official seal.

/s/ DAVIS BROWN
Notary Public in and for the
State of Texas

My Commission Expires: August, 1987.

(SEAL)

CERTIFICATE OF SERVICE (Omitted)

APPENDIX "F"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

Civil Action No. W-84-CA-112

ESTATE OF ANDERSON WILLIS, ET AL.,
Plaintiffs,

v.

ESTATE OF JOHN RILEY, ET AL.,
Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the above-captioned Plaintiffs, complaining of the above-captioned Defendants and in support of their complaint, would show the following:

I.

JURISDICTION

Subject Matter

1. Jurisdiction of this Court is invoked pursuant to Title 28 United States Code (hereinafter, "U.S.C."), Sections 1331 and 1343(a)(1)(2)(3) and (4).

2. Further, the action is peculiar to Black Americans and presents important questions arising under the 1st Amendment to the Constitution of the United States; the 13th Amendment to the Constitution of the United States; the 14th Amendment to the Constitution of the

United States, Section 1; and the Federal Civil Rights Acts of 1861, 1866, 1870 and 1871, 42 U.S.C. §§ 1981, 1982, 1983, 1985, 1986 and 1988 as hereinafter more fully appears.

2.b. Plaintiffs allege intentional, constitutional deprivations of Federal civil rights to own, hold, and/or inherit land in the ex-Confederate slave State, Texas. "But for" (1) a self-sealing, self-executing, self-concealing, racially dual system of citizenship intentionally maintained by Freestone County, Texas through law and/or custom; (2) Ku Klux Klan and/or white hate group terrorism and purpose intentionally directed against Plaintiffs and their class based on race and/or association; (3) fraudulent recordations affecting land and an absolute absence of notice and opportunity to defend same, which recordations and lack of notice and opportunity to defend were specifically directed towards Blacks and were procedurally and substantively enhanced and/or encouraged by, among other things, Freestone County's racially dual recordation, notice and/or law enforcement systems; and (4) Defendants' and/or their predecessors-in-title's active concealment of material critical facts necessary to bring or timely discover this particular civil action, Plaintiffs would not have suffered those constitutional deprivations. Plaintiffs contend that dual, race conscious, legal and customary systems of recordation and notice practice employed by Freestone County, Texas in an institutional sense have intentionally deprived and/or aided and abetted private citizens in unconstitutionally depriving Plaintiffs of their rights to own, hold and inherit land. "But for" those racially based recordation and notice systems, Plaintiffs would have owned, held and been able to pass on or inherit and

affirmatively deal with the land sought to be recovered as a remedy herein. Freestone County, Texas thus was and is the "moving force" behind the complained of deprivations and the *sine qua non* for private, racially, discriminatory actions taken against Plaintiffs and the loss of the Acreage.

3. There exists genuine factual issues as to whether Plaintiffs, through the exercise of "due diligence", would have discovered, in time to overcome the various statutes of limitations posed as affirmative defenses against them adequate grounds for filing the instant civil action. "Due diligence" lacks a precise definition and refers to a "fact-specific judgment on a case by case basis" and the facts of this case are *sui generis* based solely on the impermissible consideration of Plaintiffs' race and previous and continuing, extraordinary condition of servitude.

4. Plaintiffs seek declaratory relief. Therefore, Jurisdiction is also invoked under the Declaratory Judgment Act, 28 U.S.C., §§ 2201 and 2202. The declaratory relief requested includes, *inter alia,* a declaration that the Texas law on limitations of actions relative to land and the facts and circumstances alleged herein does not bar the return to Plaintiffs of the below described land by conveyance from the Defendants, who are current record owners of said land, as a remedy.

5. The Plaintiffs request that Defendants be enjoined from exercising any and all ownership rights in and to said land surface and/or mineral estates and that the court declare Plaintiffs' rights in and to said land; alternatively, that Defendants be enjoined from denying Plaintiffs a proportionate ownership in and to said land surface and/or mineral estates; alternatively, that the

Court compel Defendant Freestone County grant some adjustment or recognition in ownership to land in Freestone County in the amount claimed herein.

6. Further, Plaintiffs invoke the pendent jurisdiction of the Court to consider claims arising under the Constitution and Laws of the State of Texas.

Amount

7. The value of the Rights in question is in excess of Ten Thousand Dollars, exclusive of interests and costs.

8.a. Sometime after June 19, 1865, at approximately 56 years of age, Anderson Willis came to the State of Texas as an ex-slave. Beginning in 1868, Anderson Willis purchased either all or various parcels of the land outright and rendered same for taxation. The tracts of land described in paragraph 8., below, contain 2986.33 acres, more or less, and represent the total amount of land purchased, claimed and owned by Anderson Willis for purposes of this lawsuit.

8.b. This civil action seeks as a remedy, *inter alia,* the return or adjustment in owership of the following described real property (hereinafter referred to as the ACREAGE) located in Freestone County, Texas, to wit:

Beginning at an iron stake in the W line of F.M. Hwy. #489, at the centerline station No. 97+04, for corner of this;

Thence: Along W and SW lines of said Hwy., as follows:

S 33° 02′ W 775.73 ft. to the P.C. of a curve to the left (D of C/L=3°),

In a Southwesternly direction around said curve, a distance of 990.2 ft., the chord of which bears S 18° 33′ 30″ W 979.7 ft. to the P.T. of said curve,

S 4° 05′ W 2185.4 ft. to the P.C. of a curve to the left (D of C/L=6°),

In a Southeasternly direction around said curve, a distance of 952.35 ft., the chord of which bears S 23° 04′ E 915.24 ft. to the P.T. of said curve,

S 50° 13′ E. 468.09 ft. to a P.I.,
and S 52° 16′ E 399.87 ft. to an iron stake, for corner of this, at the point of intersection of the SW line of said Hwy. with the SE line of a gravel road;

Thence: S 40° 20′ W 1211.8 ft. along an old fence line on the SE line of said road, to an iron stake;

Thence: S 34° 51′ W 44.5 ft. to an iron stake;

Thence: Along fence lines, as follows:
S 41° 22′ W 354.6 ft. to an iron stake,
S 41° 18′ W 163 ft. to an iron stake,
S 41 W 332 ft. to an iron stake,
S 35° 54′ W 104.5 ft. to an iron stake,
S 45° 39′ W 41.5 ft. to an iron stake,
S 36° 40′ W 88 ft. to an iron stake,
S 58° 59′ W 13 ft. to an iron stake,
S 44° 59′ W 189 ft. to an iron stake,
S 40° 11′ W 299 ft. to an iron stake,
S 39° 52′ W 161 ft. to an iron stake,
S 41° 53′ W 137 ft. to an iron stake,
S 39° 16′ W 84 ft. to an iron stake,
S 44° 27′ W 36 ft. to an iron stake.
S 42° 29′ W 79.5 ft. to an iron stake,
S 37° 29′ W 134 ft. to an iron stake,
S 40° 17′ W 178.5 ft. to an iron stake,
S 36° 09′ W 20 ft. to an iron stake,
S 42° 08′ W 104.5 ft. to an iron stake,
S 44° 06′ W 144 ft. to an iron stake,

S 41° 16′ W 154.6 ft. to an iron stake,
S 38° 56′ W 46.5 ft. to an iron stake,
S 43° 19′ W 76.5 ft. to an iron stake,
and S 41° 50′ W 78.4 ft. to an iron bolt, for ell corner of this;

Thence: Along fence lines, as follows:
S 50° E 70.5 ft. to an iron stake,
S 46° 09′ E 49 ft. to an iron stake,
S 49° 11′ E 587.7 ft. to an iron stake,
and S 49° 46′ E 1036.8 ft. to an iron stake, for corner of this;

Thence: S 29° 44′ W 444.5 ft. to an iron stake by a tree with old wire;

Thence: N 64° 26′ W 31.2 ft. to an iron stake by a tree with old wire;

Thence: N 85° 29′ W 157 ft. to an iron stake by a tree with old wire;

Thence: S 56° 32′ W 179 ft. to an iron stake by a tree with old wire;

Thence: S 54° 22′ W 137 ft. to an iron stake by a tree with old wire;

Thence: S 8° 50′ W 229 ft. to an iron stake;

Thence: S 25° 26′ W 114.5 ft. to an iron stake by a tree with old wire;

Thence: S 44° 26′ W 245 ft. to an iron stake by a tree with old wire;

Thence: S 51° W 36 ft. to an iron stake by a tree with old wire;

Thence: S 78° 26′ W 74.5 ft. to an iron stake, for ell corner of this;

Thence: S 18° 45′ E 98 ft. to an iron stake by a tree with old wire;

Thence: S 48° 59′ W 31 ft. to an iron stake on the SW bank of said creek;

Thence: Along old fence lines, as follows:
S 41° 07′ W 195.4 ft. to a 2″ iron pipe,
S 40° 46′ W 304.4 ft. to an iron stake,
S 32° 10′ W 25.5 ft. to an iron stake,
S 44° 20′ W 11 ft. to an iron stake,
S 34° 06′ W 18.5 ft. to an iron stake,
S 54° 09′ W 10 ft. to an iron stake,
and S 41° 13′ W 159.7 ft. to an iron stake,

Thence: Along a fence line, as follows:
S 30° 34′ W 119.5 ft. to an iron stake,
S 49° 21′ W 66.3 ft. to an iron stake,
S 52° 12′ W 116.5 ft. to an iron stake,
S 47° 41′ W 44.5 ft. to an iron stake,
S 54° 49′ W 40.5 ft. to an iron stake,
S 46° 27′ W 66.5 ft. to an iron stake,
S 42° 33′ W 61 ft. to an iron stake,
S 29° 21′ W 193.3 ft. to an iron stake,
S 36° 23′ W 208 ft. to an iron stake,
S 42° 11′ W 315.2 ft. to an iron stake,
S 41° 27′ W 575.1 ft. to an iron stake,
and S 43° 05′ W 511.8 ft. to an iron stake;

Thence: S 47° 06′ W 32.5 ft. to an iron stake;

Thence: S 41° 36′ W 268.5 ft. along a fence line, as extended, to an iron stake;

Thence: S 40° 53′ W 1351.7 ft. along an old fence line, to an iron stake, for corner of this;

Thence: Along fence lines, as follows:
N 47° 37′ W 958 ft. to an iron stake, for corner of this,
N 9° 46′ W 8.5 ft. to an iron stake, for corner of this,
N 22° 39′ E 553.3 ft. to an iron stake, for corner of this,
N 46° 43′ W 578 ft. to an iron stake, for corner of this,

S 68° 27′ W 662.9 ft. to an iron stake,
S 69° 03′ W 83 ft. to an iron stake,
S 66° 34′ W 785.1 ft. to an iron stake,
and S 69° 37′ W 135 ft. to an iron stake, for corner of this;

Thence: Along old fence lines, as follows:
N 48° 13′ W 299.6 ft. to an iron stake,
N 48° 46′ W 552.6 ft. to an iron stake,
N 59° 49′ W 31.5 ft. to an iron stake,
N 48° 39′ W 581.2 ft. to an iron stake,
N 49° 50′ W 30 ft. to an iron stake,
and N 49° 25′ W 1289 ft. to an iron stake,

Thence: N 49° 15′ W 425 ft. along a fence line, as extended, to an iron stake;

Thence: N 30° 01′ W 42 ft. along an old fence line, to an iron stake on the SE side of a creek;

Thence: N 1° 55′ W 71 ft. to an iron stake on the NW bank of said creek;

Thence: Along old fence lines, as follows:
N 10° 58′ W 33.5 ft. to an iron stake,
N 52° 48′ W 24.5 ft. to an iron stake,
N 60° 32′ W 63.3 ft. to an iron stake,
S 46° 51′ W 27 ft. to an iron stake,
N 65° 57′ W 94 ft. to an iron stake,
N 79° 59′ W 20.5 ft. to an iron stake,
N 64° 41′ W 109 ft. to an iron stake,
N 39° 36′ W 255.5 ft. to an iron stake,
and N 42° 50′ W 101.5 ft. to an iron stake, for the most Westernly NW corner of this;

Thence: Along fence lines, as follows:
N 43° 58′ E 208 ft. to an iron stake,
N 41° 20′ E 263.5 ft. to an iron stake,
N 44° 10′ E 84.5 ft. to an iron stake,
N 42° 41′ E 108.6 ft. to an iron stake,
N 40° 11′ E 227 ft. to an iron stake,
N 41° 26′ E 848.2 ft. to an iron stake,

Thence: Along old fence lines, as follows:
S 45° 34′ E 160 ft. to an iron stake,
S 41° 34′ E 88 ft. to an iron stake,
S 34° 40′ E 25 ft. to an iron stake,
S 41° 06′ E 67.5 ft. to an iron stake,
S 41° 40′ E 103.5 ft. to an iron stake,
S 35° 47′ E 294.3 ft. to an iron stake,
S 38° 11′ E 100 ft. to an iron stake,
S 56° 02′ E 15.7 ft. to an iron stake,
S 39° 23′ E 242.2 ft. to an iron stake,
S 33° 12′ E 88.2 ft. to an iron stake,
S 49° 01′ E 15 ft. to an iron stake,
S 27° 14′ E 24 ft. to an iron stake,
S 33° 05′ E 185.8 ft. to an iron stake,
S 20° 38′ E 11.5 ft. to an iron stake,
S 41° 01′ E 143 ft. to an iron stake,
S 36° 16′ E 23 ft. to an iron stake,
S 41° 34′ E 68 ft. to an iron stake,
S 39° 08′ E 283.3 ft. to an iron stake,
S 61° 49′ E 32.5 ft. to an iron stake,
S 82° 33′ E 12.7 ft. to an iron stake,
S 4° 11′ W 32 ft. to an iron stake,
and S 34° 58′ E 238.2 ft. to an iron stake, for ell corner of this;

Thence: Along old fence lines, as follows:
N 36° 07′ E 48.5 ft. to an iron stake,
N 37° 45′ E 176.5 ft. to an iron stake,
N 36° 23′ E 252.9 ft. to an iron stake,
N 41° 02′ E 96 ft. to an iron stake,
N 37° 05′ E 120.6 ft. to an iron stake,
N 38° 36′ E 119 ft. to an iron stake,
N 39° 56′ E 200 ft. to an iron stake,
N 35° 55′ E 110.8 ft. to an iron stake,
N 41° 42′ E 145 ft. to an iron stake,
and N 40° 10′ E 674.8 ft. to an iron stake, for ell corner of this;

Thence: Along old fence lines, as follows:
N 54° 04′ W 50.5 ft. to an iron stake,

N 47° 12′ W 250 ft. to an iron stake,
and N 51° 10′ W 847.1 ft. to an iron stake, for corner of this, in the S line of a road;

Thence: N 36° 43′ E 77 ft. along an old fence line, as extended, and along the S line of said road, to an iron stake;

Thence: Along old fence lines, as follows:
N 32° 34′ E 681.2 ft. to an iron stake,
N 37° 49′ E 181.4 ft. to an iron stake,
and N 39° 30′ E 65.5 ft. to an iron stake, for corner of this;

Thence: Along old fence lines, as follows:
S 64° 20′ E 74.3 ft. to an iron stake,
S 3° 28′ E 9 ft. to an iron stake,
S 2° 26′ W 14 ft. to an iron stake,
S 51° 05′ E 45.5 ft. to an iron stake,
S 58° 07′ E 110 ft. to an iron stake,
S 50° 51′ E 120 ft. to an iron stake,
S 48° 11′ E 38.5 ft. to an iron stake,
S 51° 50′ E 338.3 ft. to an iron stake,
S 53° 02′ E 97 ft. to an iron stake,
S 57° 58′ E 40 ft. to an iron stake,
S 48° 08′ E 40 ft. to an iron stake,
S 56° 52′ E 18 ft. to an iron stake,
S 45° 06′ E 43 ft. to an iron stake,
S 52 E 45 ft. to an iron stake,
S 39° 29′ E 18 ft. to an iron stake,
S 51° 01′ E 77 ft. to an iron stake,
and S 46° 58′ E 53.9 ft. to an iron stake, for ell corner of this;

Thence: Along old fence lines, as follows:
N 25° 10′ E 21.3 ft. to an iron stake,
N 45° 08′ E 17.5 ft. to an iron stake,
N 41° 36′ E 211.5 ft. to an iron stake,
N 39° 14′ E 59 ft. to an iron stake,
N 43° 39′ E 35 ft. to an iron stake,

Thence: S 33° 46′ E 122 ft. to an iron stake by a tree with old wire;

Thence: S 44° 17′ E 574.7 ft. to an iron stake by a tree with old wire;

Thence: S 65° 05′ E 509.3 ft. to an iron stake in an old dead tree trunk, for corner of this;

Thence: S 50° 43′ W 783.9 ft. along an old fence line, as extended, to an iron stake;

Thence: S 49° 04′ W 193 ft. along a partial old fence line, to an iron stake, for corner of this;

Thence: N 54° 57′ W 106 ft. along an old fence line, to an iron stake, for ell corner of this;

Thence: S 54° 22′ W 137 ft. to an iron stake by a tree with old wire;

Thence: S 8° 50′ W 229 ft. to an iron stake;

Thence: S 25° 26′ W 114.5 ft. to an iron stake by a tree with old wire;

Thence: S 44° 26′ W 245 ft. to an iron stake by a tree with old wire;

Thence: S 51° W 36 ft. to an iron stake by a tree with old wire;

Thence: S 78° 26′ W 74.5 ft. to an iron stake, for ell corner of this;

Thence: S 18° 45′ E 98 ft. to an iron stake by a tree with old wire;

Thence: S 33° 46′ E 122 ft. to an iron stake by a tree with old wire;

Thence: S 44° 17′ E 574.7 ft. to an iron stake by a tree with old wire;

Thence: S 65° 05′ E 509.3 ft. to an iron stake in an old dead tree trunk, for corner of this;

Thence: S 50° 43′ W 783.9 ft. along an old fence line, as extended, to an iron stake;

Thence: S 49° 04′ W 193 ft. along a partial old fence line, to an iron stake, for corner of this;

Thence: N 54° 57′ W 106 ft. along an old fence line, to an iron stake, ell corner of this;

Thence: S 39° 42′ W 1245 ft. along a partial old fence line, as extended, to an iron stake;

Thence: S 39° 57′ W 855.6 ft. to an axle;

Thence: S 41° 03′ W 622 ft. to an iron stake, for corner of this;

Thence: N 49° 09′ W 718.1 ft. to an iron stake by a tree with old wire;

Thence: N 45° 48′ W 408.2 ft. to an iron stake by a tree with old wire;

Thence: N 48° 51′ W 155.7 ft. to an iron stake by a tree with old wire;

Thence: N 51° 14′ 173 ft. to an iron stake by a tree with old wire;

Thence: N 48° 20′ W 725.4 ft. to an iron stake by a tree with old wire;

Thence: N 43° 35′ W 280 ft. to an iron stake by a tree with old wire;

Thence: N 51° 10′ W 274 ft. to an iron stake, for corner of this;

Thence: S 78° 11′ W 20 ft. to an iron stake by a tree, for corner of this;

Thence: Along old fence lines, as follows:
S 40° 39′ W 1336 ft. to an iron stake,
S 41° 43′ W 37 ft. to an iron stake,
and S 31° 50′ W 31.5 ft. to an iron stake on the NE bank of a creek;

N 42° 57′ E 80 ft. to an iron stake,
N 41° 25′ E 161.4 ft. to an iron stake,
and N 42° 57′ E 158 ft. to an iron stake,

Thence: N 39° 04′ E 129 ft. along an old fence line, as extended, to an iron stake;

Thence: N 42° 47′ E 297.1 ft. along an old fence line, as extended, to an iron stake;

Thence: Along fence lines, as follows:
N 41° 41′ E 91 ft. to an iron stake,
N 43° 34′ E 122.4 ft. to an iron stake,
and N 29° 39′ E 14.8 ft. to an iron stake,

Thence: Along old fence lines, as follows:
N 25° 01′ E 63 ft. to an iron stake,
S 80° 37′ E 42.5 ft. to an iron stake,
N 33° 27′ E 155 ft. to an iron stake,
N 40° 43′ E 26.2 ft. to an iron stake,
N 30° 53′ E 15 ft. to an iron stake,
N 40° 55′ E 93.4 ft. to an iron stake,
N 35° 41′ E 34.7 ft. to an iron stake,
N 40° 08′ E 275 ft. to an iron stake,
N 35° 47′ E 29.2 ft. to an iron stake,
N 43° 59′ E 54 ft. to an iron stake,
N 39° 38′ E 105.7 ft. to an iron stake,
N 36° 51′ E 79 ft. to an iron stake,
N 41° 18′ E 104.5 ft. to an iron stake,
N 48° 47′ E 30.5 ft. to an iron stake,
N 35° 31′ E 113.5 ft. to an iron stake,
N 41° 10′ E 152 ft. to an iron stake,
N 37° 23′ E 178 ft. to an iron stake,
N 39° 49′ E 101.4 ft. to an iron stake,
N 36° 03′ E 93 ft. to an iron stake,
N 40° 01′ E 132 ft. to an iron stake,
N 35° 50′ E 65.3 ft. to an iron stake,
N 43° 11′ E 53.7 ft. to an iron stake,
and N 38° 47′ E 647.2 ft. to an iron stake, for ell corner of this;

Thence: Along a fence line N 47° 31′ W 430.2 ft. to an iron stake and N 49° 38′ W 10.5 ft. to an iron stake;

Thence: Along an old fence line N 46° 51′ W 223.7 ft. to an iron stake and N 47° 43′ W 520.6 ft. to an iron stake, for corner of this;

Thence: Along old fence lines, as follows:
N 45 E 262.8 ft. to an iron stake,
N 35° 01′ E 60 ft. to an iron stake,
and N 44° 37′ E 620.4 ft. to an iron stake on the SW side of a road;

Thence: N 78° 40′ E 91.15 ft. to an iron stake on the NE side of said road;

Thence: N 76° 39′ E 847.8 ft. along a fence line, to an iron stake, for corner of this;

Thence: N 35° 23′ W 785.65 ft. along a fence line, to an iron stake, for corner of this;

Thence: Along fence lines, as follows:
N 54° 17′ E 1021.3 ft. to an iron stake,
N 58° 04′ E 37 ft. to an iron stake,
N 52° 20′ E 127 ft. to an iron stake,
N 54° 32′ E 248.05 ft. to an iron stake,
N 55° 37′ E 110.5 ft. to an iron stake,
N 53° 01′ E 107 ft. to an iron stake,
N 47° 16′ E 64.5 ft. to an iron stake,
N 43° 17′ E 74.5 ft. to an iron stake,
N 55° 23′ E 37 ft. to an iron stake,
N 48° 51′ E 48.5 ft. to an iron stake,
N 57° 05′ E 52 ft. to an iron stake,
N 67° 15′ E 39 ft. to an iron stake,
N 60° 48′ E 46 ft. to an iron stake,
N 55° 12′ E 926 ft. to an iron stake,
N 52° 28′ E 85.5 ft. to an iron stake,
and N 48° 53′ E 123.8 ft. to a fence post, for corner of this;

N 40 E 171 ft. to an iron stake,
N 37° 02′ E 698.2 ft. to an iron stake,
N 39° 15′ E 35 ft. to an iron stake,
N 35° 28′ E 71.5 ft. to an iron stake,
N 37° 48′ E 107 ft. to an iron stake,
N 37° 38′ E 116 ft. to an iron stake,
and N 36° 42′ E 361.5 ft. to an iron stake, for ell corner of this;

Thence: Along a fence line N 51° 01′ W 35.5 ft. to an iron stake and N 52° 26′ W 1249.9 ft. to an iron stake, for corner of this;

Thence: Along fence lines, as follows:
N 40° 16′ E 2174.4 ft. to an iron stake,
N 37° 53′ E 2041.4 ft. to an iron stake,
and N 39° 23′ E 1073.9 ft. to an iron stake, for the most Easternly NE corner of this;

Thence: Along old fence lines, as follows:
S 50° 03′ E 1011 ft. to an iron stake,
S 47° 16′ E 825.6 ft. to an iron stake,
S 35° 34′ E 20 ft. to an iron stake,
S 44° 55′ E 36.5 ft. to an iron stake,
S 59° 10′ E 15.6 ft. to an iron stake,
S 47° 46′ E 93.5 ft. to an iron stake,
S 52° 57′ E 101 ft. to an iron stake,
S 49° 07′ E 43 ft. to an iron stake,
S 56° 34′ E 157.5 ft. to an iron stake,
S 60° 53′ E 67 ft. to an iron stake,
S 55° 33′ E 61.65 ft. to an iron stake,
S 65° 50′ E 39 ft. to an iron stake,
S 56° 04′ E 164 ft. to an iron stake,
S 58° 52′ E 139 ft. to an iron stake,
and S 56° 11′ E 432.85 ft. to the place of beginning.

9. The Plaintiffs allege undivided fee simple interests in the foregoing ACREAGE and/or substantial portions thereof.

10. Based on the color of Anderson Willis and his issue, Plaintiffs were systematically driven off the Acreage in Freestone County, Texas by a legitimized terroristic force known as the Ku Klux Klan or a group of individuals so closely aligned or similar in *modus operandi* as to mirror the interests of the Klan and, for all practical purposes, that operated with the same lawlessness and maligned indifference for the law as applied to Blacks. The Freestone County Sheriff, Tax and Deed Record Departments participated directly in this lawlessness based on the same race considerations.

11. The attitude of the Klan and/or the white hate and supremacy groups or individuals was generally, the attitude of the State of Texas, Freestone County government, and the Confederate South relative to ex-slaves (freedmen) and persons of African ancestry. That attitude has never died and lives on today in a more clandestine, subdued, and sophisticated form. See attached for all purposes and marked as Exhibit "A", *The Klan, Yesterday and Today (Then and Now)* (A compilation of Klan activity collected at the Schomberg Institute of Black Culture in Harlem, New York) and from the local papers in Dallas and Fairfield, Texas.

12. Dr. Rick Seltzer, Associated Professor of Political Science at Howard University, conducted research on the Klan's activities in *Walker, et al. v. Butkovich, et al.*, Civil Cause No. 80-605-G, USDC M.D. N.C., commonly known as the "Greensboro Ku Klux Klan and American Nazi Party Trial", wherein Klan and Nazi party members were on trial for killing five (5) members of the Communist Worker's Party at a demonstration. That survey and a subsequent article (Chattanooga Klan Study)

show that the attitude of the 1800's maintains throughout many areas of the country, including Texas. Attached hereto for all purposes and marked Exhibit "B" is a copy of *"The Social Location of Attitudes Towards the Ku Klux Klan"* authored by Dr. Seltzer.

13. Plaintiffs intend to use the foregoing survey and article by Dr. Seltzer as well as Dr. Seltzer's testimony pursuant to *inter alia*, FED. R. EVID. 803(24) and 804 (b)(5). Plaintiffs intend to combine Dr. Seltzer's testimony, survey, and article with a current or contemporary survey to be conducted covering the counties comprising the Western District of Texas in support of Plaintiffs' contentions to prove that the iron-safe racial attitudes, codes, customs, institutions, laws, prohibitions, and traditions existed and exist in the relevant "Community" out of which this civil action arises.

14. Also relied on by Plaintiffs pursuant to FED. R. EVID. 803(24) and 804(b)(5) are:

A. A report to be produced by Dr. Linda Webb-Woodard and/or her testimony will combine with Dr. Seltzer's foregoing reports, surveys, and/or testimony tracing the history of Black people since the Mayflower, which history bears out that there was an active effort by the white Defendants and their ancestors to deny the rights of citizenship (land ownership and its incidents) to Blacks, and which effort continues to this day in Freestone County, Texas. Further, Dr. Webb-Woodard's future report and/or testimony, which rely in part on the below publications, will be offered to show the "condition" of Blacks from the stand point of attitudes, law, physical violence and intimidation and the role of "science" in the oppression of Black people.

The control of Blacks claiming land through ruthless means without absolutely any representation and with entrenched laws, e.g., statutes of limitations, to effect that control, and the justification and maintenance of said conditions and attitudes, all support Plaintiffs' theory for relief.

B. NAACP, *THE CRISIS* Magazine, . . . *A Tough Row to Hoe,* Vol. 93, No. 2 (February, 1986). This article examines the 120 year old field of "voting rights" and finds that, for Blacks, its been . . . a tough row to hoe. This lack of participation in government and the political process is intricately interwoven into Plaintiffs' argument that, based on their lack of basic freedoms, Plaintiffs existed in an extraordinary condition which made for extraordinary concealment which lead to the acreage being taken and such critical facts and their particulars being hidden from Plaintiffs or "inherently unknowable."

C. Lerone Bennett, Jr., *Before the Mayflower — A History of Black America* (5th Ed. 1969). Lerone Bennett, Jr., is a Social Historian and the author of nine books on the life and history of Black Americans. Mr. Bennett has served as advisor and consultant to several national organizations and commissions, including the National Advisory Commission on Civil Disorders. This book and its chapters on, *inter alia,* Black Powers in the Old South, The Life and Times of Jim Crow, and Red, White and Black: Race and Sex, are relevant to show the condition under which Plaintiffs labored at the time the Acreage was fraudulently taken and that currently exists.

D. C. Eric Lincoln, *The Negro Pilgrimage In America,* (4th Ed. 1967). Again, this book chroni-

cles the condition of the Plaintiffs and the iron-safe attitudes, customs, codes, traditions, etc., that have impacted Plaintiffs relative to the Acreage.

E. Chuck Summer Stone, *Black Political Power In America* (1970). This book discloses the various extralegal machinations and incredible savage acts of white brutality against Blacks attempting to exercise their civil rights and is relevant to understanding how and why Plaintiffs were denied the commodities needed to achieve self-support — land and the vote.

F. Charles E. Silberman, *Crisis In Black And White* (1964). This book combines with the foregoing books, reports and testimony to provide a meaningful and robust analysis of the conditions under which Plaintiffs have labored and during which the Acreage was forcefully and fraudulently taken.

G. Jim Schutze, *The Accommodations — The Politics of Race in an American City* (1986) Citadel Press, New Jersey. This book analyzes the attitudes, codes, customs, traditions and relationship between the two societies and classes of citizenship, i.e., Black versus White. The analysis centers on slavery in Texas and its residual impact on Texas (Black and White) through the late 1960's.

H. Texas State Historical Association, *Black Leaders — Texans for Their Times,* edited by Alwyn Barr and Robert A. Calvert, (1981) (second printing 1985). This book examines, *inter alia,* an example of a "free Negro" who also held slaves to avoid slavery himself and his relationship to land and whites in Texas.

I. Juan Williams, *Eyes on the Prize — America's Civil Rights Years, 1954-1965* (A Companion

Volume to the Public Broadcasting System's six-part television series to be used in court as visual and demonstrative evidence of the disabilities placed on "free" Blacks during the aforestated period. The television series and accompanying volume recapture the dramatic and poignant events in the years between the Supreme Court's 1954 ruling that segregated schools were unconstitutional and Congress' approval of the 1965 Voting Rights Act.) (1987) Viking Penguin, Inc.

J. Honorable A. Leon Higginbotham, Jr., *In the Matter of Color — Race & The American Legal Process: The Colonial Period,* Oxford University Press (1978) Fifth Printing 1979. This book gives the background for Blacks not being able to expect help whatsoever from the law. United States District Judge Higginbotham traces how the law developed relative to Blacks and "how the law itself, 'properly interpreted' was the oppressor, and argues that a direct lineage of contemptuous law exists from the wasteland centuries of slavery, through the hundred [plus] years of false equality since the Emancipation, Proclamation, to the 'confrontation street politics' of the sixties."

K. Burlage, John and Hollingsworth, J.B., *Abstract of Valid Land Claims* — Compiled from the records of the General Land Office and Court of Claims of the State of Texas (John Marshall & Co. at the State Gazette Office, 1859). On December 16, 1859, the Chief Clerk of the General Land Office of Texas, Robert M. Elgin, certified that for sometime, his office had in constant use, some five hundred pages of Burlage & Hollingsworth's Abstract, and found that it was well arranged and compiled with much care; *and as free from errors as a work of that char-*

acter can be made. Mr. Elgin went on to state that "it is more reliable than the former Abstract, as it contains many corrections, that have been made in [his] office from time to time". Further, on August 16, 1859, the Commissioner General Land Office, Francis M. White, stated that he had "no hesitancy in saying that [the Burlage & Hollingsworth Abstract] was well digested and arranged, and fully answers the design intended, as a safe and reliable reference, in ascertaining what . . . constitute[s] valid claims. . . ."

Finally, the Honorable Thomas H. Duval, Judge Federal Court, "carefully examined the [first 32 pages of the Burlage & Hollingsworth Abstract]", and stated his "pleasure in saying that the work is well conceived, and that its arrangement is judicious. . . .

L. Depositions, civil causes, criminal prosecutions, and/or affidavits secured since this civil action was instituted that show the truth of the matters in paragraphs 14.A. through 14.F., above, and as they relate to Plaintiffs and Defendants herein and relative to the laws and customs concerning land and property ownership and its incidents.

Plaintiffs rely on FED. R. EVID. 803 (1), (3), (13), (14), (16), (18), (19), (20), (21), and 804(b)(4).

INTRODUCTION

15. This civil rights action for damages and injunctive and declaratory relief is brought on behalf of Plaintiffs, the Estate of Anderson Willis, Deceased, and heirs of ex-slave Anderson Willis which heirs are presently denied the right to inherit the "Acreage" herein below described based on traditional and contemporary intentional dis-

criminatory treatment, legal and customary, in recordation, civil rights enforcement, judicial and extra-judicial foreclosure, and relative to basic, minimum civil liberties consistent with equal citizenship and necessary to protect Plaintiffs' land holdings. The institutional Defendant in this action is the County of Freestone, State of Texas for affirmatively allowing, encouraging, enhancing and participating in the conditions, laws and customs complained of through County agencies (e.g., Freestone County Tax Assessor's Office, Sheriff's Office, Deed Records Office), prosecuting attorneys, their supervisors, and other elected officials of Freestone County that intentionally made, perpetrated and encouraged private actions and inspired illegal conduct through dual racial policy, practice and custom. Freestone County, Texas thus was and is the "moving force" behind the complained of deprivations and the *sine qua non* for private, racially discriminatory actions taken against Plaintiffs and their predecessors in interest and the loss of the Acreage.

16. The Plaintiffs seek compensatory and punitive damages for injuries resulting from the unlawful acts of the Defendants, which resulted in the deprivation of their constitutional and statutory rights. Additionally, Plaintiffs seek declaratory and injunctive relief from this Court in order to restrain the Defendants from future illegal practices and conduct which perpetuate conditions complained of in the community as a whole and against blacks and minorities in particular, and which destroy and circumvent the intent of the Federal Constitution, relative to rights of all people to own, hold, and inherit land.

17. The system of two societies, one white and one Black, was extraordinarily self-executing, self-sealing and self-concealing. When combined with individual Defendants'

affirmative fraudulent concealments and acts of violence and Freestone County's affirmative enhancement, encouragement and perpetuation of same through its dual, racial systems of recordation, judicial involvement and law enforcement, and the extraordinary condition of servitude forming the basis of Plaintiffs' complaint, these systems were calculated to hide and did hide the critical facts necessary to bring the instant civil action. The "legal and practical effect" of this sort of extraordinary, self-sealing, self-executing, and self-concealing condition of servitude was to effectively close the courthouse door and any other conceivable forum for relief to Plaintiffs and all potential Plaintiffs in Plaintiffs' class. Therefore, it is of little significance whether Defendants had or had not also concealed their identity or the fact of injury. The wrongs complained of herein were not merely "self-concealing," rather, that concealment went to critical elements attending the particular causes of action alleged in this civil action.

18. Moreover, this civil action arises out of the post civil war acquisition of the Acreage by and ex-slave, Anderson Willis, sometime after June 19, 1865 or "JUNETEENTH", which Black Texan holiday itself is a manifestation of the power of concealment.[1] No demand was

1. Freedom arrived officially for black Texans on June 19, 1865, when Federal troops landed at Galveston. Emanipation actually came as Union troops spread out over the state or as individual slaveholders accepted the results of the war and freed their bondsmen. Some East Texas newspaper editors in the summer of 1865 urged slaveholders to maintain control over their slaves and opposed ratification of the Thirteenth Amendment, which abolished slavery, because the editors hoped for gradual emancipation and compulsory labor. Some slaveholders continued to hold their slaves well into the fall of 1865. Alwyn Barr, BLACK TEXANS—*A History of Negroes in Texas,* 1528-1971 (Chapter 3, pp. 39-40) (1982). *See also* Freestone County, Texas Historical Commission, 1 History of Freestone County, Texas 52 (1st ed. 1978).

ever made by and/or of the Defendants or their predecessors in title that *all* muniments or evidences or claims of title"—i.e., all evidence upon which title depended—be produced. When a purchaser of land accepts a deed of conveyance from his grantor, he assumes the "risk of loss" by reason of the assertion of outstanding claims against the land that are not "stale" or otherwise "time barred". Plaintiffs' claims are not stale or otherwise time barred based on the facts, circumstances and conditions alleged and relied on herein, which facts, circumstances and conditions were intended to be extraordinary and self-sealing, self executing, and self-concealing for a period of time necessary to bar any law remedy relative to the Acreage.

GENERAL HISTORICAL ALLEGATIONS

19. Plaintiffs specifically allege historical facts for the purpose of showing the degraded and subservient condition of ANDERSON WILLIS and his race during his lifetime and during the relevant period covered by this civil action.[2]

---

2. The general historical allegations relied upon herein have their origins in an opinion penned by a Southern Chief Justice of the United States Supreme Court, the Honorable Roger B. Taney. *Dred Scott v. Sandford,* 60 U.S. (19 HOW.) 393 (1857). Even the Great Emancipator himself, before he became president, expressed his unalterable opposition to political or social equality between the races. Thus in a speech he gave in 1858 he said:

> I will say then that I am not, nor ever have been in favor of bringing about in any way the social and political equality of the white and the black races—that I am not nor ever have been in favor of making voters or jurors of Negroes nor of qualifying them to hold office, nor to intermarry with white people; and I will say in addition to this that there is a physical difference between white and black races which I believe will forbid the two races living together on terms of social and political equality. And inasmuch as they cannot so live, while they do remain

20. Plaintiffs rely on such historical facts for the purpose of showing the fixed opinions, practices and policies, concerning ANDERSON WILLIS' race, upon which certain white people in control of positions, power and government spoke and acted and continue to speak and act relative to African-Americans and that class' ownership rights, title and interest in property and particularly real property. Many or all of the persons in power and government, past and present, either held slaves, fought in the confederacy to protect the slave culture, or is a decendant of such person. This is important to an understanding of the issues of ex-slave (decedents) ownership, holding or inheriting "land or property," especially that described by former masters (decedents).

21. Further, Plaintiffs rely on said historical facts to establish the general and specific reputations of the state and its political subdivisions, during the period of time herein involved, relative to customs specifically affecting lands owned or held by Plaintiffs and their ancestors, i.e., the Acreage.

22. Plaintiffs rely on reputations of the State and Freestone County as to events of general and specific history relative to racism, slavery, Jim Crow, disenfranchisement of Blacks, segregation, voting rights abridgements, and other common and accepted racial distinctions strictly enforced by the State and Freestone County and which directly determined Plaintiffs' condition relative to the Acreage and other forms of property, especially when the ruling race desired same for its benefit.

---

together, there must be the position of superior and inferior and I as much as any other man am in favor of having superior position assigned to the white race. Silberman, Charles E., *Crisis in Black and White*, pp. 92-93 (Vintage Books 1964).

23. Plaintiffs contend that ANDERSON WILLIS remained in a subservient condition during the time in which the ACREAGE or any portion thereof was unconstitutionally taken. Indeed the condition of all persons of African ancestry, was unlike that of any race of people, including the Indian. While other races were free and independent people, ANDERSON WILLIS and his race remained subject to the authority of the white race. Although the ante bellum *de jure* institution of slavery was "officially" abolished, ANDERSON WILLIS had no rights or privileges but such as those who held the local power and/or the government choose to grant his race.

24. Having been enslaved for over several centuries, ANDERSON WILLIS' race was regarded as beings of an inferior order. They were altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect, including family and property.

25. Prior to the Emancipation Proclamation, ANDERSON WILLIS and his race were bought and sold, and treated as ordinary articles of merchandise and traffic, whenever the masters could profit by it or whenever some other interest of the ruling race could be served. This opinion was at that time fixed and universal in the civilized portion of the white race in Freestone County. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute, and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as matters of public concern, without doubting for a moment the correctness of this type of attitude or thinking which appears of record in

Freestone County, Texas. Indeed, this type of condition was transmitted from generation to generation as positive social values similar to patriotism, religion, and good manners, e.g., slaves were inherited.

26. Further, this condition amounted to classic pathology with the usual destructive behavior: acting out, denial of reality, projection, transference of blame, disassociation and projection and justification.

27. Up to September 12, 1984, certain white people, including those in government in Freestone County continued to treat ANDERSON WILLIS' heirs and their race as an inferior class, and to subject them to strict police regulation, drawing a broad line of distinction between the white citizenry and Blacks. Those whites were operating privately and with State action or inaction upon the same ante bellum fixed principles regarding Blacks and, substantively, in the same manner as heretofore described.

28. Said white people operating under said system of laws and enforcement of same and under said attitudes, customs, codes, conditions, and traditions and at their pleasure, withheld the privileges and immunities necessary to defeat ANDERSON WILLIS and his descendants' rights to hold property as freed people. There were no real forums for relief available to Blacks and those closely associated with Blacks. ANDERSON WILLIS and his race had no representation in government or otherwise in Freestone County, Texas during the relevant period herein involved.

29. Finally, respecting the historical basis for this case, Plaintiffs allege that it cannot for a moment be supposed, that a class of persons thus separated and rejected from

those who formed the rule power of control in Freestone County would be automatically, in fact, transformed into full class citizens by the pen.[3] Certain White people in

---

3. Alwyn Barr, BLACK TEXANS—*A History of Negroes in Texas,* 1528-1971 (Chapter 3, pp. 39-40) (1982). While white Texans reluctantly accepted the end of slavery, they generally did not change their view of black people as inferior. Newspapers used the term "nigger," compared freedmen to apes, and published articles emphasizing "white" as a synonym for purity and innocence and "black" as a substitute for wickedness and death. The ex-Confederate majority constantly opposed the extension of social or political rights and equality to Negroes. Confusion existed in the fall of 1865 over General Gordon Granger's Juneteenth proclamation of "equality of personal rights and right of property" for freedmen. Some Texas courts allowed Negroes to testify in cases which involved them or their property, though most whites, because of their racial views, regarded black testimony as unreliable. Other judges accepted Negro testimony only against other freedmen. "It seems like the white people can't git over us being free," recalled Allen Manning, "and they do ". . . everything to hold us down all the time." *Ibid.,* p. 41.

When an all white state constitutional convention met in early 1866 to write a new constitution which would define the new status of black men, one delegate conceded "them nothing but the station of 'hewers of wood and drawers of water.' " Another urged "that the paramount object of the people of Texas," the legislature should be allowed to remove all Negroes in the state. . . . While they accepted the end of slavery and granted property rights to freedmen . . . the delegates allowed black testimony only in court cases involving Negroes . . . The first legislature elected under the new constitution prohibited intermarriage, voting, officeholding, and jury service by freedmen. Local custom followed the same general pattern in 1866 . . . *Ibid.,* p. 42.

With no means of presenting testimony in court or voting on local officials to ensure equal legal protection, Negroes faced a constant threat of violence. . . . [W]hite sheriffs [even attack[ed] . . . [Negroes killing many]. . . . *Ibid.,* pp. 42-43.

Between 1865 and 1868, 468 freedmen met violent deaths—90 percent at the hands of white men. Negroes killed only about 1 per cent of the 509 whites murdered during the same period. Certainly some of the violence resulted from the frontier nature of Texas society. But the figures indicate strong racial overtones in many of the deaths. White intimidation of black people for social and economic reasons proved quite effective under such circumstances. . . . White[s] doing wrong to Blacks [were] ignored by civil courts for

Freestone County, Texas, continued to regard the Black race as objects over which they were the master and worked at denying that race and those associated with Blacks the rights to hold real and personal property and to freedom of association.

30. This *denials or disability was clearly* and inextricably related to the Black race's previous condition of servitude and, as such, was an incident and badge of slavery. Thus, perpetual and impassable barriers were erected between the white population and Blacks and

---

lack of white testimony. . . . Negroes [were] convicted on questionable charges of evidence. . . . [W]hite Democrats protested most bureau and army actions, regardless of their merits, because they reduced white control over freedmen. Racial prejudice made freedmen's trials in civil courts "worse than a farce" in the judgment of the Freedmen's Bureau commander who most planters respected as generally fair in his efforts. . . . Congress began to pass a series of acts which divided the ten former Confederate states that refused to ratify the Fourteenth Amendment into five districts with military commanders. The acts also called for the enfranchisement of black men and the creation of new state constitutions which would accept the Fourteenth Amendment protection of equal civil rights. Final [results] showed that 56,678 whites and 47,581 Negroes had registered. *Ibid.*, pp. 43-45.

Upset by the new course of events, white Democratic newspapers complained that freedmen had become "insolent and swaggering, puffed up with new and indigestible theories of equality, the most intolerable of created beings." Yet Republican papers criticized the continued difficulty of convicting any white men for crimes against Negroes. . . . Military commander[s] of Texas under the Reconstruction Act tried to correct the court situation by removing from the jury lists persons who could not take the loyalty oath and by adding black people . . . [which moves were objected to by James W. Throckmorton, the Democratic governor who also objected to Philip Sheidan's attempts to reconstruct] . . . the operation of the courts and the registration of voters . . . [T]o disarm and intimidate freedmen away from the polls or into the Democratic camp, and in a few cases to kill black and white Republican leaders, white Texans created autonomous chapters of the Ku Klux Klan. . . . [T]he Democratic party generally . . . oppos[ed] emancipation and civil and political rights for black people. *Ibid.*, pp. 45-46.

those associated with Blacks based solely upon the race of the Blacks. These certain white men, including the Ku Klux Klan (which, in 1986, held a rally in Freestone County) and/or other race conscious groups, and/or individuals with the aid and under color of state law and/or customs acted to divest these racially suspect and heavily laden people of their equal right to own, hold and inherit land and all the same rights, privileges, and immunities appertaining to these rights. Under the Federal Constitution, and, at the very least, the right to hold property meant and means the right to the same freedoms enjoyed by white citizens in receiving notice concerning actions involving land and property, monitoring and an opportunity in defending ownership of said property. Of course, the latter freedoms were absolutely absent and any assertions that they were available to persons of African-Americans was/is not true and, of course, one class benefited (ex-slave holders and their descendents) and another class suffered, and continues to suffer (ex-slaves and their descendants) based solely on their race. ANDERSON WILLIS, his heirs and their race had fixed upon them stigmas of the deepest degradation, that made it virtually impossible to hold land or substantial amounts or choice pieces of land or other property in Freestone County, Texas. Plaintiffs allege that said Freestone County enforced stigmas or disabilities are incidents and badges of slavery.

31. Two separate and distinct societies existed based on unconstitutional State laws, customs, codes, rules, regulations and tyranny. Those same laws, customs, codes, rules, regulations, along with tyranny, blocked any reasonable expection of discovery and resolving the fraud

and continuous, individuals, insidious civil rights violations affecting ownership of the Acreage.

32. Defendants got control and possession of the land due to the extraordinary closed society of the white race, which was self-executing, self-sealing and self-concealing combined with unknowable and undiscoverable fraud. ANDERSON WILLIS, his heirs and their race's extraordinary condition of servitude, i.e., legal and customary servitude, i.e., inability to refuse the commands of whites, lack of any protection from the local law enforcement, inability to check the records, inability to correct records respecting the ACREAGE, inability to do anything about the County's treatment, private conspiracies, with and without government involvement and sanctions, implied and express, officials acting with reference to race under color of state law to discipline, discourage and dissuade Plaintiffs, *de facto* authorization of white men to continue the once sanctioned practices of masters and encouragement of those practices by the participation of and/or intentional lack of law enforcement by government officials or intentional lack of recognition that African-Americans have legitimate claims and complaints, against White citizens and as those complaints or claims concern status relative to property. This extraordinary condition of servitude and extraordinary closed society of the white race produced extraordinary concealment of the fraud and civil rights violations affecting ownership of the Acreage.

33. The combined effect of the several different sources of government control or support operating on an institutional basis and under the described system (Sheriff Department-Deed Records-Judicial Involvement) made it impossible to contest or prevent the complained of un-

constitutional taking of the ACREAGE.[4] The above-stated events of general and specific history form the reputation

---

4. Cook, Joseph G. *and* Sobieski, Jr., John L. 1 *CIVIL RIGHTS ACTIONS* 174-186 (Matthew Bender (Times Mirror Books) 1986). The Thirteenth Amendment above was sufficient to abolish slavery, but something more was needed to abolish unequal laws. For after the Civil War many of the southern legislatures enacted Black Codes, which, in the eyes of the proponents of the Civil Rights Act of 1866 [42 U.S.C. §§ 1981-1982], effectively reenslaved the freedmen. Black codes made the freedman a social outcast, industrially a serf, legally a separate and oppressed class. Slavery, abolished by the organic law of the nation, was in fact revived by the statutes of the states. *See also* J. Tenbroek, EQUAL UNDER LAW 180 (1965). Noteworthy remarks concerning the intended scope of the civil rights bills of the late 1800s were offered by one of the ardent opponents of the bills passage and show the clear and unanimous recognition of the foregoing conditions existing in ex-slave successionist states:

> [The bill] proscribes all discriminations against negroes in favor of white persons that may be made anywhere in the United States by any "ordinance, regulation, or custom," as well as by "law or statute."
>
> . . .
>
> But there are civil rights, immunities, and privileges, "which ordinances, regulations, and customs" confer upon white persons everywhere in the United States, and withhold from negroes. On ships and steamboats the most comfortable and handsomely furnished cabins and staterooms, the first tables, and other privileges; in public hotels the most luxuriously appointed parlors, chambers, and sallons, the most sumptuous tables, and baths; in churches not only the most softly cushioned pews, but the most eligible sections of the edifices; on railroads, national, local and street, not only seats, but whole cars, are assigned to white persons to the exclusion of negroes and mulattoes. All these discriminations in the entire society of the United States are established by ordinances, regulations, and customs. [Said] bill proposes to break down and sweep them all away, and to consummate their destruction, and brings the two races upon the same great plane of perfect equality, declares all persons who enforce those distinctions to be criminals against the United States, and subjects them to punishment by fine and imprisonment . . .
>
> I have at all times and on all occasions, by word and by vote, done what I could against slavery and everything related to it and connected with it. I have asked always for what was right and taken on all occasions what I could get. I have acted upon

in Freestone County arising before this civil action, as to customs affecting lands in the "Community," and reputation as to events of general history in the whole of the State of Texas relative to Blacks and those closely aligned with Blacks.

SPECIFIC FACT ALLEGATIONS

34. The history of the condition of Blacks in Texas relative to their inability to hold property based solely on their race and previous condition of servitude was combined with fraudulent and concealed real property transactions under color of state custom and law and "terrorism". This system of divestment and "terrorism" was intentionally established by local government officials through direct involvement or through knowing acquiescene and through the administering of laws and customs specifically directed at the recently freed slaves and their descendants.

35.a. For example, certain white citizens in Defendants' chain of title, in conspiracy created fraudulent promissory notes wherein ANDERSON WILLIS was the note holder and his children were the debtors. Those conspirators then signed ANDERSON WILLIS' name to said notes and traded them freely until, ultimately, said notes were reduced to judgment liens on ANDERSON WILLIS' property. The same fraudulent scheme was repeated rejected again and again with the same and/or

---

the idea that one step taken in the right direction made the next step easier to take.

See generally Fleming, W., 1 *DOCUMENTARY HISTORY OF RECONSTRUCTION* 273-312 (1906) (a number of the Black Codes are collected); McPhearson, E., *THE POLITICAL HISTORY OF THE UNITED STATES OF AMERICA DURING THE PERIOD OF RECONSTRUCTION*, pp. 29-44 (1871).

different actors and all transaction were intentionally suffered, enforced and/or participated in by the state and local authorities under color of state custom and/or law. Other fraudulent schemes involved representations in Court that Plaintiffs or members of their families were served with process but, in fact, said persons were never served and never knew of the proceedings involving the acreage until the limitation period had run and "*bona fide* purchases for value" assumed record title in the chain of fraud. The only time such actions were brought to their attention is doing foreclosure. The lack-of notice feature of these customs affecting land were especially effective since African-Americans could and would not dispute the process server's word that service had occurred. The affirmative customs and policy of certifying personal service was established to perpetuate white superiority in actions involving land.

35.b. The state homestead laws required at least 200 acres of rural land as the homestead, however, the Defendants' predecessors took approximately 632 acres and left Anderson Willis with only 100 acres, which 100 acres were supposed to be given to Alec by Will. Anderson Willis' name is affixed to the Will except that he could not write as he was an ex-slave and slaves could not read or write. Education for slaves, freedmen and persons of African descent was against the laws, codes, customs, traditions, etc. This phenomenon rings current in the form of desegregation cases.

36.a. The Stephen Bynum Survey (320 Acres) appeared as located in Freestone County, Texas in the Supplemental Unknown and Unrendered section of the tax assessment rolls up through 1879. This is important

inasmuch as Anderson Willis was supposed to have purchased this survey in 1869 from the administrator of the Estate of Thomas T. Gammage, Deceased. In this regard, Anderson Willis was supposed to have purchased all the land upon which Ms. Shelton resided at the time of her death. Ms. Shelton had been Martha Gammage and married Mr. Shelton after Thomas T. Gammage's death. If, in fact, this land was the Stephen Bynum Survey, the metes and bounds description and/or name "Stephen Bynum" was then documented as existing. However, the Stephen Bynum metes and bounds description only came up specifically related to Anderson Willis when the fraudulent foreclosures of the fraudulent notes occurred in 1904. Further, Anderson Willis did not show up on the tax rolls as owning said Stephen Bynum Survey until 1881. Prior to showing him as owner of only Stephen Bynum Survey, which had been unrendered and unknown, the tax records show him as owning J. G. Cooper (640 Acres), W. D. Harris (320 Acres), T. R. Thurman (320 Acres), J. B. Walker (320 Acres), J. P. Lynch (320 Acres), Simon Sanchez (320 Acres) and Manuel Riondo (320 Acres). In other words, it took thirty-five (35) years to determine or define "the land where Ms. Shelton resided at the time of her death." R. P. Brown, J. S. Wells, and C. Y. Burkle all showed as unknown and unrendered in the tax office until well after 1880. It was in 1881 that Anderson Willis was "assigned by the County tax assessor's office" as paying taxes on the Stephen Bynum.

36.b. Sometime after the "determination" by the Freestone County, Texas tax assessor's office, of the extent and scope of the Anderson Willis ownership based on the early and continuous description "on the land where

Ms. Shelton resided at the time of her death," the Western District lawsuit involving Anderson County was finally resolved. The metes and bounds descriptions relative to Freestone County as decided by agreement of the parties in that suit then became burdens and impositions on Anderson Willis and his family. Recall that Anderson Willis did not participate in nor did he have notice of that Western District of Texas civil action that impacted his ownership in Freestone County, Texas.

37.a. A portion of the Acreage is said to be in what is called the Eleven League "Jose Ygnacio Aguilera" Mexican grant. Subsequent to Texas Independence, titles had to emanate from the State of Texas, therefore, any and all, Mexican land grants had to be affirmed by the State. The papers on the Aguilera grant were not seen by the General Land Office until in 1873, thirty-six (36) years after the first call for same to be proved and deposited.[5]

---

5. Spanish and Mexican land grants constitute the basis of title to more than twenty-six million acres of land in Texas; and being written in Spanish, it is necessary that they be translated correctly in English in order that interested individuals, judges and other government officers whose duty it is to uphold such titles, may understand them. *Ibid.*, p. 2, Taylor, Virginia H., THE SPANISH ARCHIVES OF THE GENERAL LAND OFFICE OF TEXAS, The Lone Star Press, 1955 (Austin). The Spanish Archives of the General Land Office of Texas consist of land grants made in Texas by Spain and Mexico, and records pertaining thereto. *Ibid.*, 3. The bulk of the Archives . . . , was assembled in 1837 from the colony land offices of the late State of Coahuila and Texas as the duty of John P. Borden, the first land Commissioner of the Republic of Texas. *Ibid.*, 3. The Land Office created by the First Congress on December 22, 1836, was opened in Houston on October 1, 1837. Acting under a *law* that *ordered 'all empresarios, commissioners, political chiefs, alcades, and other persons to deliver over to the general land office all titles, books, surveys, papers, documents, or other things in their possession or charge, belonging to the Republic. . . .' Many . . . records* [*were*] *never . . . obtained. Ibid.*, 3-4. (Emphasis Supplied.)

37.b. In 1871, litigation was begun in the Western District of Texas (at that time Austin) by Mexican citizens Henry William Mexia, et al., to determine the *bona fides* and location of said Aguilera grant. That litigation was subsequently transferred to the Eastern District of Texas (Tyler) where such litigation was disposed of in 1881. That litigation was, from all appearances, fraudulent relative to Freestone County residents and, in particular, Anderson Willis. That litigation was begun to determine whether the Eleven League Aguilera grant was located in Anderson County. Sometime in 1878, the court proceedings began to refer by scrible in the margins and editing to Freestone County. The equipoised land owners (white) in Anderson County proved that the Aguilera grant was never marked on the ground, never heard of, not even on file with the land office, and suffered, *inter alia,* from lack of diligence in perfection.[6]

---

6. Though lands were of trifling value, the procurement of a title was tedious in its requirements. It was necessary that a colonist address a formal petition for his land to the governor, or his delegate, who signed an approval ordering a specially designated local officer to make a reconnaissance, survey, and appraisal of the tract and give official possession to the applicant. A written acknowledgment of the order was recorded by the notary in attendance who proceeded with the notification of the commissioned officer and the petitioner, making a certification of the act which was signed by all three parties. The special officer, accompanied by witnesses, appraisers, and adjacent landowners, summoned to prevent boundary conflicts, went to the tract and made the *vista de ojos,* or *visual inspection survey,* and *demarcation.* At that point the official act of possession took place, and the grantee, as a token of his true ownership, performed ceremonial demonstrations such as walking to and fro over the tract, throwing rocks, pulling grass, cutting bushes, and digging holes in the ground. All those proceedings were incorporated into a report signed by the officer, the witnesses, and the interested party who, in most cases, carefully rendered his signature with the sign of the cross. The complete record of events, written contemporaneously with their occurrence and in continuation of the original petition, constituted a title in its simplest form.

The parties in Anderson County relied on their "junior surveys" and/or adverse possession (first in time of possession, first in right and the alien Plaintiffs agreed to write them). After almost ten (10) years and the Defendants request for bond by the alien Plaintiffs and requests to produce said aliens for examination other than by depositions upon written questions propounded, the Plaintiffs agreed with the resisting white Defendants that Defendants title, no matter how claimed, was superior to the alleged Jose Ygnacio Aguilera Grant which was a "young grant" relative to Defendants possession and title. Under the agreement, the Defendants would not claim any right, title and interest in and to the remaining area attempted to be identified in that litigation as the Aguilera grant in Anderson and Freestone County, albeit Anderson Willis was not involved.

37.c. All the Mexican Grants alleged to be in Freestone County were never located there by the Western Division litigation originating out of Anderson County, Texas involving *only* Anderson County residents and alien Plaintiffs. Those Grants were really located, *inter alia,* in Navarro and Henderson Counties. Freestone County is directly under Navarro County. Anderson County is directly under Henderson County. The Trinity

---

If contingent circumstances necessitated the inclusion of more than one order from the governor, testimonials of witnesses as proof of occupation and ownership, adjustments with adjacent landowners, appointments of substitute officers, or certified copies of previous titles or transfers, a longer and more complex document resulted, and months or even years were expended in its completion.

In the absence of a notary, a title could be legalized by a local officer acting with attendant witnesses. An official notary accompanied Governor Salcedo to Nacogdoches, but at that far-away post the stamped paper required for legal instruments was not provided for use. The omission always was carefully noted and explained in every document. *Ibid.*

tive to the acreage has been on the sub-surface or mineral estate. The land appears to have been burdened by oil and/or gas lines that take the form of a cross. Further, on information and belief, Freestone County has used gravel taken from the Acreage in road and bridge projects.

40. Anderson Willis had "fourteen (14) children," Bird, East, Berry, Mary, Dan, Alex, a/k/a "Alec", Sarah, Emma, Bill "Bud", Martha, Henry, Alice, Sandy, and Rose. Twelve (12) of those children have descendants claiming hereunder. Those twelve children were spread over the Acreage around Anderson Willis and the Willis grave yard which grave yard is a little over a mile west of where Bud Willis' great grandson, Chavous Willis, currently resides.

41. Chavous Willis over 82 years old and is most intimately involved with and knowledgeable of the extent and boundary of the Acreage as known to the Willis family. Throughout his years, Chavous has experienced the horrors of Freestone County when Blacks were considered dogs and rabbits. Chavous has seen and heard of Blacks gunned down with no protection or investigation by police authorities. For example, his uncle, Melton "Jam" Willis, Anderson Willis' grandson, was murdered by a white man Herman Daniel, over a disputed claim on the Acreage. Herman Daniel tried to place a lien on Jam's beautiful horse. Jam refused and was blown dead off his horse by Herman Daniel. Chavous was an eye witness. Jam's body lay undisturbed the remainder of the day until the following day when the sheriff arrived. The sheriff told the Willises not to do anything and if any one of them put a scratch on Herman Daniel the rest of the Willises would be cleaned up. No one would ever be arrested for killing a "coon," "nigger," or black man. One of the

instances ringing vivid in Chavous' mind is the time Trap Bailey's son blew all the top of a (Black) Lee Ivan Walden's head off in Downtown Fairfield after the Sheriff's department had mysteriously let the two out of jail drunk. Trap Bailey's son was white and referred to the incident as killing a "damned dog". Nothing was ever done and the Sheriff's department was not to be found at the moment of Lee Ivan's death. Chavous stated Lee Ivan died with his hands in his pockets. Chavous alleges that Plaintiffs could not do anything about their land being taken inasmuch as they were like "a man got a shotgun and no shells, he can't shoot. Because [the Willises] didn't have no background. But as [The Willises] grew up, . . . [w]e educated our children . . . [a]nd they could read these records and find out why, how, [the Willises] land was taken . . .". Further, Chavous claims Blacks knew better than to attempt research or inquiry in the County departments, e.g. tax department. Chavous was the leader in the Survey of Anderson Willis' land.

42. For years, Dan Willis operated a store on the "Willis plantation" (Acreage). Dan Willis' son, Eugene "Pud" Willis, and his wife Ader Willis was possessing, occupying, owning and claiming the land through Anderson Willis in 1966 in their FHA home. Particularly, the land was referred to as the Francis Jones Survey, which survey, according to the record, is not the alleged Jose Ignacio Aguilera Grant. One night sometime in 1966 and while Ader was ill in bed, the Freestone County Sheriff and/or his deputies and other individuals came onto the Willises' land and physically set Eugene and Ader outside by the side of the road and threatened with physical violence and warned against the Willises attempting to retake or complain about the taking of their land.

Ader was brought from the house in the bed and the bed was placed under the fence alongside the road. Eugene and Ader eventually left their home the next day, banished. Ader died that day. Finally, Eugene and Ader's children have recently received tax statements relative to the Willis property which taxes were paid.

43. Another device practiced against the Willis family to reflect less land ownership than actually existed was the fraudulent Will on file at the Courthouse showing that Anderson Willis held only 100 acres of land, which land was to go to Alex Willis for caring for him. Alex Willis owned his land by outright lifetime gift and the Will was passed off to him in furtherance of divesture, with the intent to have Alex rely on that misrepresentation. This was especially true when Anderson Willis' inability to write is recalled.

44. The magnificant allegations concerning the Freestone County system of self-sealing, self-executing and self-concealing civil rights denials relative to, *inter alia,* land, are illustrated by elderly residential testimony from the Black Community.

A. Ola Mae Fantroy, her husband Alonzo (who has been confined to a wheel chail and sickly for over forty (40) years relates the use of their names and other Black citizens names by the City of Fairfield, County seat of Freestone County, to secure Urban Development Action Grant funds [UDAG NO. B-00-AB-48-0065] sometime in 1979. Attached hereto marked Exhibit "C" and incorporated herein for all purposes is an October 16, 1979, copy of a letter from a Fairfield City Manager, A. K. Steinheimer, to the Department of Housing and Urban Development transmitting supplemental data concerning

said UDAG number. The list of new businesses and jobs generated by the project are frauds. The people stated therein are all Black and do not have the stated businesses and employees. None of the named Black citizens knew anything of this letter, its contents and this fraud until sometime in 1983. Mrs. Fantroy got this information from local past and late NAACP president, Dan Thomas. Mrs. Fantroy stated in Deposition Testimony that the right to question and research in the county records came to Blacks on a step by step basis and only after the Martin Luther King era of Civil Rights. Mrs. Fantroy believes that the prevailing attitude in Freestone County is that of fear—what can be done. Mrs. Fantroy knows the fear based on the County's reputation relative to Black's. In fact, Mrs. Fantroy's family has had personal experience with violent racism. Her father was beaten about the head and her mother hit in the side with a pistol by the Sheriff and/or others and her father suffered until his death by that beating.

45. Finally, ANDERSON WILLIS was unconstitutionally dispossessed of record by Sheriff's Deed. ANDERSON WILLIS and his heirs have, however, remained in possession of some of the ACREAGE.

46. On October 10, 1985, deposition testimony, Mrs. Ezra Mary Willis, a/k/a, Ezra Mary Harris, listed on the UDAG NO. B-00-AB-48-0065, corroborates Mrs. Fantroy's story. Further, Mrs. Willis, Chavous Willis' wife, recalled the treatment of Black citizens contesting illegal authority with the TAP TAYLOR story, another incident where a Black Citizen was murdered for trying to protect his family. The event was vivid still in her mind inasmuch as her mother washed TAP's Shirt and mentioned that "it was awful . . . somebody had shot somebody up like that.

River divides Navarro and Henderson Counties and divides Freestone and Anderson Counties. The Mexican Grants were described only and merely by reference to the East and West banks of the Trinity River, if at all. Under that description, it was easy for the "bad actors" to claim either Navarro and Henderson *or* Freestone and Anderson as the Counties of location, which latter choice Plaintiffs allege was done to fraustrate and hide true ownership of the Acreage in Anderson Willis and other Blacks in Freestone, Navarro and Henderson Counties. The J. Y. Aguilera Grant *was never legally established as being in Freestone County, Texas.*

38.a. This was one source of Anderson Willis' problems. He was not notified that his land was the subject of litigation and/or agreements in another County involving aliens and white citizens to establish said land's extent and scope in the County in which he resided as a "freedman." Anderson Willis was first showed up on the tax rolls in 1867. These tax rolls are Anderson Willis' salvation inasmuch as they locate him in fact, on and around the acreage long before the Western District suit and the General Land Office filings yet, he was not notified of the suit imposing the Aguilera grant on his land holdings. Presumptively, Anderson Willis would have had the same first in time/title first in right as arguments that saved the white Anderson County residents.

38.b. During the relevant period, many Blacks lived in and around the alleged Mexican Land Grants established by the Western District litigation agreements between the aliens and white Anderson County residents, e.g., Hendersons, Tituses, Allens, Solomons, and others. All of said Blacks have been impacted by the determina-

tions made by said Western District litigation agreements and subsequent litigation relying on same. Plaintiffs allege that said Blacks were adversely and directly impacted by racial distinctions customs, codes, practices, and traditions relating to land ownership.

38.c. As earlier stated, the Burlage & Hollingsworth Abstract (1859), listed all valid Mexican and Spanish Titles recorded in the General Land Office through 1859. That compilation shows the following Grants and their issue dates, quantities and locations.

A. Juan Nepomuceno Acosta by S. M. Williams, atty., issued November 21, 1833—11 leagues, located (5/Limestone, 3/Navarro and 3/Henderson);

B. Simon Sanchez, by J. S. Roberts, atty., issued July 12, 13, 14, 15, 17, 18, 20, 22, 24, 28, and 30—11 leagues, located respectively (1/ Hunt, ½/Anderson and ½/Freestone, 8/Hunt, and 1/Harrison);

C. Manuel Riondo by S. M. Williams, atty., issued November 26, 1833—11 leagues, located (½/Navarro and ½/Henderson);

D. Juan Luis Chavert, issued November 19, 1833, 11 leagues, located (Limestone);

E. Mariaon Riva Palacia, by S. M. Williams, atty., issued November 21, 1833, 11 leagues, located (5/Limestone, 6/Navarro and Henderson).

39. None of the white Defendants have ever lived on the Acreage. None of the white Defendants have ever worked the land forming the Acreage. None of the white Defendants raised families on the Acreage. In the early 1900s, the concentrated and overwhelming interest rela-

It went real deep with [Ezra] and [she] was really afraid . . . of white[s] after [she] heard the way [TAP was] done. . . . [T]he dog was drinking his blood and they went and shot the dog. . . ." Further, as was customary in Freestone County, Ezra worked on her daddy's farm which sustained the family. Ezra died in 1986, subsequent to giving her deposition.

47. Avery Vickery Johnson, Seventy-Nine (79) years old, recalls violence against Blacks in Freestone County area. Moses "TAP" Taylor was the victim of brutal racial murder. No papers kept record of those events but "colored people" kept up with the violence by word of mouth. The Taylor family attempted to have Glover Woodard convicted except that according to the Prosecutor, the "very idea of a nigger trying to prosecute a white man about a nigger wench" allowed Woodard to go free. Thereafter, Old Man Sandy Taylor, Moses' daddy, was barred by Glover Woodard from town who almost beat the old man with a hickory stick except that "TAP" shot him in self-defense. TAP was never tried inasmuch as a bunch of white men riddled his body with bullets. [Recall Ezra's recollection, above]. Mr. Johnson's daddy had just come to take TAP's family to safety.

48. Bessie Earl Norris, Ninety-Six (96) years old, gave a deposition in February 1985 and told of other racially discriminatory customs and practices of Freestone and Anderson Counties. She testified that the Sheriff from Anderson came across County lines to Freestone and got the Freestone County Sheriff's permission to take she and her husband, Henry, to Anderson County. The Norris' were locked in jail and Bessie was pregnant at

the time. The reason for the arrest was that Henry refused to sign his name. Mrs. Norris recalls hangings of blacks, "they sure did, lots of them at times . . . colored . . . it would be close . . . enough for [one] to hear it."

49. In contemporary terms, the Willises have experienced the wrath of raw power when exercising their rights to inquire into the records of land ownership and when attempting to civilly reclaim portions of the Acreage under the laws of the State of Texas. Jeanette Willis Adkins, a sixty-three (63) year old great grandmother, was assaulted by the Freestone County Texas Tax Assessor, Patsy Stroud, in the Tax Office subsequent to the filing of this civil action. While the evidence by any civilized standard showed clearly that Mrs. Adkins was wronged and that the Tax Assessor, Patsy Stroud, attempted to dissuade and discourage her from exercising said rights and to penalize her in a summary fashion, an all white jury packed with friends of the Tax Assessors banker husband found no liability. Every available law enforcement officer (city, county, and state troopers) were brought to the courthouse prior to the rendition of said verdict. The only persons present were old Black people interested in justice. The jury left the Courthouse making "cat calls" and yelling "the South shall rise again." That case was appealed through the state system and affirmed. Mrs. Adkins is a primary researcher and a leader of the Anderson Willis Research Committee, which fact was well known before and throughout the case. Further, Mr. Eddie Willis, Chairman of that Committee, was convicted of criminal trespass. The Willises claim that this was a trumped up charge to discourage the involvement in this case. The

owners of the land did not complain nor did they testify. In fact, said record owners are Black Defendants in this civil action. While white citizens can adversely possess Willis property, under the foregoing and herein alleged facts, conditions, and circumstances, the Willises do not have the right to attempt to perfect adverse title without actual criminal prosecution.

50. The personal and family history of the Willis family show that ANDERSON WILLIS was, financially, an independent freedman and that his children were as independent. ANDERSON WILLIS purchased the ACREAGE from fair-minded white Texas citizens who apparently then believed in the self-evident truths that all men are created equal; that they are endowed with certain inalienable rights, among which are life, liberty, and the pursuit of happiness. ANDERSON WILLIS fully paid for and owned, in fee simple, the ACREAGE.

51. ANDERSON WILLIS never conveyed any portion or parcel of the ACREAGE to anyone outside the Willis family. *Anderson Willis,* never sold any of the land to his children; rather, those children were given their land. Neither ANDERSON WILLIS nor any of the Willis heirs ever caused any portion or parcel of the ACREAGE to be placed, directly or indirectly, in the market place.

52. Neither ANDERSON WILLIS nor any of the Willis heirs ever assigned, mortgaged or leased or in any way encumbered or caused a lien, charge or other burden to be placed on the ACREAGE. Any and all liens, charges or other burdens ever placed on the ACREAGE, were done so fraudulently and by a group of conspirators (aided and abetted by local officials at every level) acting to perpetuate the institution of slavery or a condition of servitude as close to that of slavery as was possible.

53. ANDERSON WILLIS could neither read nor write, which intellectual disabilities Plaintiffs allege were directly related to his past condition of servitude and were additional incidents and badges of slavery. Although ANDERSON WILLIS suffered from said disabilities, the extent and nature of his land, the ACREAGE, was well known to him and has been made known to Plaintiffs over the years by being specifically pointed out to Plaintiffs by ANDERSON WILLIS and his issues. The extent and nature of the ACREAGE are a part of Plaintiffs' family's ancestral and personal history. Many of the Plaintiffs grew up on the ACREAGE and knew each other's family boundaries. The Willis heirs continue to reside on portions of the ACREAGE. Some of the Willises have never lived off the ACREAGE. The Willises have never abandoned the ACREAGE. The Willises have been forced off parts of the ACREAGE through the devices herein alleged. The Willises have always been, denied substantive and procedural due process defense of the ACREAGE.

54. Further, the Willises have always been denied substantive and procedural due process and equal protection relative to bringing any and all claims for said acreage or relative to alleging the critical facts necessary to this complaint based on the extraordinary self-executing, self-sealing, and self-concealing condition under which they labored.

55. The boundaries of the ACREAGE and the facts that ACREAGE belongs to the above-captioned WILLIS estate and heirs are confirmed and verified through, *inter alia,* the Tax Records in Freestone County, Texas, the records in the General Land Office and the WILLIS' personal or family history and the general and specific history of this Southern Slave State.

56. ANDERSON WILLIS and his heirs and their race have been intentionally denied "fundamental" rights guaranteed in the United States Constitution based on their race and previous condition of servitude (incidents and badges of slavery).[7]

57. During Defendants' wrongful occupation of Plaintiffs' land under color of state law, Defendants have torn down fences and erected new fences indicating differing boundaries. Further, within the heart of the ACREAGE lies the family cemetary wherein the bodies of many of Plaintiffs' ancestors, including that the ex-slave ANDERSON WILLIS, are located. That cemetary has been invaded by unauthorized hunters and others who have evidenced a maligned indifference for Plaintiffs' dead. These interlopers leave huge trash piles that attract animals into the cemetary which animals cause further disturbance. Some of the headstones and gravesites have even been violated and destroyed by high powered rifles. Plaintiffs have been forbidden from using the cemetary and adverse claims are made to it.

58. Plaintiffs have the same right as is enjoyed by the white citizens to inherit, purchase, lease, sell, hold, and convey real and personal property, as much as one could buy. Plaintiffs also have the same right as is enjoyed by

---

7. In January 1866, Senator Lyman Trumbull, Republican - Illinois, stated in emphasizing the basis for the Civil Rights Act of 1866 [42 U.S.C. §§ 1981-1982], that civil liberty is the liberty to which every citizen is entitled . . . and . . . [a]ny statute [code or custom] which is not equal to all, and which deprives any citizen of civil rights which are secured to other citizens, is unjust encroachment upon his liberty; and is, in fact, a badge of [servitude], which by the Constitution is prohibited. Cook, Joseph G. and Sobieski, Jr., John L., 1 CIVIL RIGHTS ACTIONS 29 (Matthew Bender (Times Mirror Books) 1986).

the white citizens to exclude persons from their property and birth right, the ACREAGE.

59. Prior to October 2, 1984 "equal opportunity" and equal protection and due process of law were guaranteed by the 14th Amendment to the United States Constitution. This should not have been only in words. The facts and circumstances indicate whether equal opportunity, equal protection and due process really exist with substance. An intentional and entrenched system of activities, disciplines, interpretations, laws and social customs prescribing and proscribing the life of Plaintiffs and their ancestors overruled and operated instead of the United States Constitution. The results were, of course, unconcionable, invidious laws and customs that directly and intentionally operated insidiously and disparately against one race, Blacks, based on their race and previous conditions of servitude and a redistribution of land holdings away from the Plaintiffs and to Defendants.

60. The ACREAGE has been passed around among the same circles of officials and private citizens through openly fraudulent and larcenous transactions, supported by threats of physical harm and affirmative shows of encouragement and force by law enforcement officials. The System of Recordation in Freestone County, Texas has been a tool employed to illegally divest the Estate of ANDERSON WILLIS and their beneficiaries and heirs of all of the ACREAGE based solely on ANDERSON WILLIS' race. The series of events leading to this civil action were not misfortunate and unintended but were a pattern and routine practice directed at Plaintiffs' race. The denial of wrong doing by county officials and employees and their excuses offered to explain how someone other than Anderson Willis or his heirs could exercise

ownership rights with the Acreage amounts to more than bare violations but are part of an aggravating circumstance. Further, the natural, probable and foreseeable result of enforcing a dual system of recordation and not protecting Plaintiffs' race from Klan and white hate activity was to cause land holdings in Freestone County and the whole of Texas to shift by fraud and terror from Blacks to Whites and hence to increase or perpetuate the condition of servitude, e.g., slaves could not hold, own or inherit land and Anderson Willis could not hold or own land and Plaintiffs cannot inherit same based on Anderson's race. The county officials acted against the Plaintiffs due to *de jure* and *de facto* racial classifications that had and continue to have reasonably foreseeable discriminatory effect and were customs and policies applied and currently applied in an intentionally, discriminatory manner.[8]

---

8. Levy, Martin L., *The Supreme Court in Retreat: Wealth Discrimination,* 4 Texas Southern University Law Review (Special Issue No. 2) 209, 226 (1977). That democratic rule in itself does not guarantee "individual freedom and rights," particularly in regard to minorities, is an historical fact. Slavery under representative government in the United States from 1787-1864, and Hitler's majority election by the German Reichstag serve as explicit examples of such. Silberman, Charles E., *Crisis in Black and White,* p. 78 (1964). Over one hundred forty-eight years ago, Alexis de Tocqueville observed that there is a natural prejudice that prompts men to despise whoever has been inferior long after he has become their equal, i.e., feelings of racial superiority "die hard." Though the Thirteenth, Fourteenth and Fifteenth Amendments abolished slavery and made the ex-slave equal to the ex-master, constant, continuous and sustained civil rights legislation, litigation and protests have been aimed at securing meaningful and robust equality of citizenship clearly denied based solely on race and/or previous condition of servitude. *See* e.g., *Sweat v. Painter,* 339 U.S.C. 629 (1950); *Brown v. Board of Education,* 347 U.S. 483 (1954); *U.S. v. State of Texas,* 330 F. Supp. 235 (E.D. Tex. 1971) (Freestone County; 50 Tex. Bar Journal, No. 1, p. 97 (Jan. 1987).

61. White men were securing to themselves and their beneficiaries and heirs and successors in interest, stability and posterity at the expense of Plaintiffs and Plaintiffs' race who were yet heavily laden with the incidents and badges of slavery, e.g., banishment, compulsory service to what the white man commanded, restraint of personal movements, disability to hold property, inability to be a true party in Court or be a credible witness against a white person. Substantively, ANDERSON WILLIS never had secured to him rights considered essential to civil freedom, such as the right to make contracts, sue and be sued, give evidence, inherit, hold and dispose of property although those rights were secured to the white citizenry.

62. Plaintiffs request this Court to now declare and vindicate said fundamental rights which appertain to the essence of citizenship, and the enjoyment of or deprivation of which constitutes the essential distinction between freedom and slavery.

63. Plaintiffs assert that it is fundamentally unfair and unconscionable that Plaintiffs be intentionally held down while fraud is practiced against them and prohibited from defending their land due soley to their race and previous extraordinary, self-sealing, self-executing, and self-concealing condition of servitude with no effective course of redress at any level of government and then have the Texas limitations of actions statutes applied against them. Indeed, the state custom and law was such that ANDERSON WILLIS and his heirs and race and any person associated with them were just as restricted in their relations relative to whites as they were in slavery. The attitudes, codes, customs, institutions, laws, prohibitions and, traditions during formal slavery continued to persist and

pervade the community wherein the ACREAGE is located and such attitudes were manifested in sometimes more subtle and "sophisticated" forms and at other times in cruel, violent and summary fashion. Those attitudes, customs, laws and traditions were directed specially and intentionally toward Blacks based solely on their race and previous condition of servitude. Those attitudes, customs, laws, and traditions operated to specially deny Plaintiffs and their race in general, the very rights, privileges and immunities that were at a minimum necessary to ever have a chance at true civil freedom in, *inter alia,* owning, holding, inheriting and disposing of the ACREAGE.

64. Plaintiffs never had those minimum and basic freedoms generally enjoyed by the white citizenry that did not associate with Blacks. Plaintiffs' citizenship was severely restricted when it came to judicially or extra-judicially disputing, contesting, fighting for or insisting on their rights or making the sort of contacts currently enjoyed. There was no equal protection of the laws relative to the ex-slave ANDERSON WILLIS, his heirs and, in general, his race and those associated with said race. Plaintiffs contend that under these circumstances, they were and are denied equal protection and due process of the law (substantive and procedural). Plaintiffs contend that the attitudes, codes, customs, institutions, laws, prohibitions and, traditions complained of herein were so dominant that many good people were discouraged from standing-up against the conspicuous racial codes and customs by social, physical and financial considerations. Plaintiffs contend that, generally, any fair approach relative to ANDERSON WILLIS and his heirs and race by whites jeopardized the latter just as if they were themselves black, i.e., they had the stigma. Plaintiffs alleged that a

few of their own race has historically been used to exploit the remainder. Plaintiffs allege that a few of their own race was used in some of the purported divesting transactions, herein complained of.

65. Any and all Parties who have dealt with the ACREAGE or parcels thereof had specific knowledge of the institutional fraud and the history of civil rights violations practiced on the Plaintiffs. Indeed, the only reason those parties were able to deal with Plaintiffs' property, the ACREAGE, was due to the systemic denial of true citizenship and their knowledge that under the self-sealing, self-executing, self-concealing system, Plaintiffs would never find out in time to contest the ownership under the laws as written.

66.a. Plaintiffs, however, were totally ignorant of the operative facts until this lawsuit began which facts were concealed intentionally by the established system. The extraordinary circumstances under which Plaintiffs lived lead to this extraordinary concealment which went to the critical element of ownership and citizenship. Once the Klan and their system had closed the courthouse door to all Plaintiffs it was of little significance that the Defendants and their predecessors in interest continued to support the concealed fraudulent ownership, and the historic civil rights violations. Defendants have actively concealed information that prevented Plaintiffs from knowing or alleging crucial elements of their present claim.

66.b. Any failure to file their claim before October 2, 1984, was not inexcusable delay, especially where any prejudice to Defendants by Plaintiffs delay if any, in bringing this particular civil action cannot be attributed to Plaintiffs. Rather any prejudice was caused by Defendants' predecessors in right, title and interest.

these facts and circumstances and, in fact, participated because it was a way of life with two separate and distinct societies, one dominant and one basically slave. The County of Freestone, and its officials, having knowledge of these egregious conspired wrongs to defeat Plaintiffs of their rights had the power to prevent or aid in preventing the commission of the same, neglected or refused to do so based on the foregoing "class-based invidiously discriminatory animus." Further, based on the foregoing conditions, facts and circumstances there was, up to the filing of this civil action, "inherently unknowable injury" to Plaintiffs and their class or race.

74. No "curative" proceedings were ever undertaken. No demand was ever made by any of the Defendants or their predecessors in the title that all "muniments of title" — i.e., all the original deeds or other instruments upon which title depended — be produced. Indeed, none of the interlopers in the recorded chain of title ever investigated and gave a *bona fide* appraisal of the title of their respective grantor's before completing their purchases. When a purchaser of land accepts a deed of conveyance from his grantor, he assumes the "risk of loss" by reason of the assertion of outstanding claims against the land that are not "stale" or otherwise "time barred."

75. The Texas "recording acts" have always provided that, unless recorded, certain "instruments affecting land titles" shall be void as against subsequent purchasers of the land to be affected. Instruments affecting land titles are "marriage certificates, heirships affidavits, and statements otherwise concerning marriage, birth and death.

76. Plaintiffs hereby demand a jury trial.

77. Plaintiffs have retained Donald W. Hicks, Sr., of the law firm of Hill Hicks Collins, Attorneys and Counselors at Law, to represent them in the vindication of their rights in this matter and have promised to pay Mr. Hicks and the firm reasonable attorneys' fees in consideration for such representation. Pursuant to 42 U.S.C. § 1988, Plaintiffs would show they are entitled to reimbursement by Defendants of their reasonable attorneys' fees.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Court take Judicial Notice of the following:

a. That from 1861 through 1983, the Congress of the United States of America prepared, passed and continued, renewed and/or extended legislation which sole purpose was the elimination of racial distinctions, codes, customs and laws that discriminate against Plaintiffs and their class;

b. That from 1861 until 1983, Black people in Freestone County could not forcibly reclaim land or use self-help to reclaim or to exercise available state means of possessing, claiming and owning land that was forcefully taken and/or held by any white man claiming a superior right thereto;

c. That the records of the federal court and circuit in which this Court sits cannot find in its backlog of cases dating from 1861 through 1983 any suit wherein any black man or woman successfully gained ouster or brought reclamation actions against any white man or woman in Freestone County, Texas;

d. That there has been constant and substantial litigation relative to the citizenship status of

Blacks as a class of Americans that has gone throughout the early 1980's;

e. That the Ku Klux Klan and white hate groups still exist. For example, the 1980 Fifth Circuit Court of Appeals case wherein the United Klans of America sued FBI agents for damages arising out of FBI's counter intelligence program designed to expose, disrupt and otherwise neutralize the Klan. *United Klans of America and Knights of the Ku Klux Klan, Inc. v. James L. McGovern, former special agent in charge, Birmingham office of Federal Bureau of Investigation, et al.*, 621 F.2d 152 (5th Cir. 1980).

f. That *all* or substantially all the litigation concerning Plaintiffs' class status has been due to race specific distinctions, codes, customs, traditions, and laws. E.g., *Heart of Atlanta Motel Inc. v. United States*, 379 U.S. 241 (1964); *Brown v. Board of Education*, 347 U.S. 483 (1946); *Smith v. Allwright*, 321 U.S. 649 (1944); *Nixon v. Hendon*, 273 U.S. 536 (1927).

FURTHER, PREMISES CONSIDERED, Plaintiffs pray for:

1. A declaratory judgment declaring the present record owners as trustees holding said ACREAGE or portions thereof in constructive trust for the benefit of Plaintiffs based on First Amendment and Thirteenth Amendment violations and violations of due process and equal protection of laws under the Fourteenth Amendment.

2. A declaratory judgment declaring Texas' Statutes barring actions to recover land unconstitutional as applied to Plaintiffs.

3. A declaratory judgment that Plaintiffs and their ancestors had no capacity to resolve this matter

prior to this civil action being brought and that Plaintiffs causes of action were inherently unknowable until June 19, 1984, due to the self-executing, self-concealing nature of Freestone County, Texas and/or State of Texas' racially, dual systems of recordation and citizenship.

4. A declaratory judgment that Plaintiffs cause of action under their condition was not reasonably knowable by Plaintiffs and/or that Plaintiffs' ignorance was induced by all Defendants and/or their predecessors-in-interest's conduct.

5. A declaratory judgment declaring that Plaintiffs civil action is not barred by laches.

6. A declaratory judgment declaring that Plaintiffs have labored under extraordinary conditions that have caused extraordinary concealment of crucial elements of their complaint.

7. A declaratory judgment declaring that under the facts of this case no person or entity other than the sovereign governments of the United States and of the State of Texas has a greater and superior right to the ACREAGE than the WILLIS heirs.

8. A declaratory judgment declaring that Defendants hold legal title to the ACREAGE or portions thereof as a result of denials to ANDERSON WILLIS, his heirs and the Black race of full and equal benefit of the laws and proceedings of Freestone County, in violation of 42 U.S.C. § 1983.

9. A declaratory judgment declaring that Defendants hold legal title to the ACREAGE or portions thereof as a result of ANDERSON WILLIS, his heirs (Plaintiffs) and race being deprived of their rights, privileges and immunities under

67. Any and all Court proceedings of record involving the ACREAGE or parcels thereof were either sham proceedings or proceedings wherein fraud was practiced on the Court by parties, their attorneys and agents and the local law enforcement authorities all with the intent to violate Plaintiffs' civil rights. None of the ACREAGE was ever freely conveyed and in many instances portions were lost by default and Sheriff's deed. ANDERSON WILLIS never knew anything about any judicial proceeding and at all times relevent continued on the land with his wives and children and their families.

68. Prior to the filing of this civil rights lawsuit, Plaintiffs have never been successful in securing the services of any attorney who recognized the nature of their claim or who was willing to say, although true in every respect, the things alleged herein.

69. Fraud and larceny when practiced against free people is particularly reprehensible. Fraud and larceny practiced against enslaved people who have absolutely no legitimate chance of recognizing and curing such, based solely on race and the extraordinary conditions of servitude and extraordinary closed society of the white race, is uncivilized and offends the basic cornerstones of the United States Constitution. Protection of Plaintiffs' constitutional rights does not and should not lessen with the mere passage of time under the circumstances of the case. This concept has recently been manifested in cases involving Native Americans and Japanese Americans. To effectively bar ANDERSON WILLIS, his heirs and the Black race from monitoring and defending the ACREAGE until some statute of limitation period has run was intentional and is unconstitutional. Any state laws that purport to cut off the Plaintiffs' rights herein are unconstitutional

and offend all notions of fair play and substantial justice, and under the facts and circumstances, are inconsistent with the First Amendment and the federal law and policies of the 13th Amendment prohibiting slavery and incidents and badges thereof and 14th Amendment equal protection and due process.

70. Further, Plaintiffs assert that fundamental principles of justice so rooted in the traditions and conscience of a civilized people compel restoration of any and all portions of the ACREAGE, presently being possessed or held by persons other than WILLIS heirs for the above violations of Plaintiffs' civil rights.

71. Plaintiffs contend that the tenor and condition of the times relative to ANDERSON WILLIS and his heirs and those associated with their race, along with the various conspiracies to intentionally violate Plaintiffs' civil rights to freely associate, make contracts, sue and be sued, give evidence, inherit, hold and dispose of property, should shock the conscience of this Court and require exercise of all the power and cognizance that can ever be raised in equity.

72. Plaintiffs would show that certain Defendants' actions as enumerated herein were willful and malicious, and that therefore Plaintiffs are entitled to punitive damages.

73. No one has ever peaceably taken possession of Plaintiffs' land. Possession and perfection of record ownership were done through systematic terrorism of the Willis family based on Anderson Willis' race. Anderson couldn't even sign a deed or other document relating to the land. The record owners, past and present, the oil companies, and the County of Freestone knew about

color of state custom or law in violation of 42 U.S.C. § 1983.

10. A declaratory judgment declaring that Defendants hold legal title to the ACREAGE due to ANDERSON WILLIS, his (Plaintiffs) and the Black race having been denied the same rights as are enjoyed by white citizens in the County of Freestone, State of Texas, to inherit, purchase, lease, sell, hold, and convey real and personal property in violation of 42 U.S.C. § 1982.

11. A declaratory judgment that Defendants hold legal title to the ACREAGE due to certain Defendants' violations of 42 U.S.C. § 1985(3).

12. A permanent injunction be entered enjoining Defendants from exercising any ownership rights in the Acreage.

13. A permanent injunction be entered enjoining Defendant County of Freestone from prohibiting Plaintiffs from paying taxes on the Acreage or exercising ownership in or to the Acreage.

14. Judgment issue decreeing that Plaintiffs recover a sum to be determined in an accounting to be rendered as ordered by this Court.

15. Judgment be entered in favor of Plaintiffs against certain Defendants for the violations enumerated herein (in amounts to be determined by this Court) for: (a) punitive damages, (b) costs of Court, and (c) reasonable attorneys' fees for maintaining such a racially, dual unconsciouable system that formed the moving force behind as was the *sine qua non* for Plaintiffs' complaint.

16. Judgment for such other and further relief, at law or in equity, as to which these Plaintiffs may by this pleading or proper amendment thereto show themselves justly entitled.

Attached are affidavits in support of the allegations contained in this First Amended Complaint.

Respectfully submitted,

Attorneys for PLAINTIFFS

CRAIG WASHINGTON, ESQ.
SIDNEY J. BRAQUET
WASHINGTON & RANDALL
Attorneys and Counselors at Law

1000 The Houston Building
2323 Caroline Street
Houston, Texas 77004-1081

AND

HILL HICKS COLLINS
Attorneys and Counselors at Law
Renaissance Place
714 Jackson Street, Ste. 530
Dallas, TX 75202

By: _____
Donald W. Hicks, Sr.

By: _____
Donald W. Hill

CERTIFICATE OF SERVICE (Omitted)

APPENDIX "G"

UNITED STATES CONSTITUTION

AMENDMENT XIII.—SLAVERY ABOLISHED

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

UNITED STATES CODE ANNOTATED

§ 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

R.S. § 1977.

§ 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

R.S. § 1978.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.

§ 1985. Conspiracy to interfere with civil rights

* * *

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

R.S. § 1980.

§ 1986. Action for neglect to prevent

Every person, who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

R.S. § 1981.

§ 1988. Proceedings in vindication of civil rights; attorney's fees.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

R.S. § 722; Pub.L. 94-559, § 2, Oct. 19, 1976, 90 Stat. 2641; Pub.L. 96-481, Title II, § 205(c), Oct. 21, 1980, 94 Stat. 2330.

Supreme Court, U.S.
FILED
JAN 27 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. 88-1085

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

ESTATE OF ANDERSON WILLIS, ET AL.,
Petitioners,

v.

ESTATE OF JOHN RILEY, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT DOW CHEMICAL COMPANY'S BRIEF IN OPPOSITION

CHRISTOPHER E. HOWE
A. L. DENT III*
FULBRIGHT & JAWORSKI
1301 McKinney Street
Houston, Texas 77010
(713) 651-5151
Attorneys for the Respondent Dow Chemical Company
* Counsel of Record

Date: January 27, 1989

Alpha Law Brief Co., Inc. — 8748 Westpark — Houston, Texas 77063 — 789-2000

12 pp

QUESTION PRESENTED

WHETHER THE COURTS BELOW CORRECTLY DECIDED THE FACTS WHEN THEY HELD THAT THE PETITIONERS' EQUITABLE TOLLING ARGUMENT FAILED SINCE THE PETITIONERS KNEW OF AND COULD HAVE SUED ON THEIR CAUSES OF ACTION AT LEAST TWO YEARS BEFORE THEY FILED SUIT.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	I
TABLE OF CONTENTS	II
TABLE OF AUTHORITIES	III
STATEMENT OF THE CASE	2
ARGUMENT	4
CONCLUSION	7
CERTIFICATE OF SERVICE	8

TABLE OF AUTHORITIES

CASES	Page
General Talking Pictures Corp. v. Western Electric Co., 304 U.S. 175 (1938)	4
Hohri v. United States, 586 F. Supp. 769 (D.D.C. 1984), *rev'd.*, 782 F.2d 227 (D.C. Cir. 1986), *petition for rehearing denied*, 793 F.2d 304 (D.C. Cir. 1986), *vacated*, ____U.S.____, 107 S.Ct. 2246 (1987)	5, 6
United States v. Johnson, 268 U.S. 220 (1925)	4
Wilson v. Iseminger, 185 U.S. 55 (1902)	7
Wood v. Carpenter, 101 U.S. (11 Otto) 135 (1879)	6
STATUTES	
42 U.S.C. § 1981	3
42 U.S.C. § 1982	3
42 U.S.C. § 1983	3
42 U.S.C. § 1985(3)	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

NO. 88-1085

ESTATE OF ANDERSON WILLIS, ET AL.,
Petitioners,

v.

ESTATE OF JOHN RILEY, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

RESPONDENT DOW CHEMICAL COMPANY'S BRIEF IN OPPOSITION

On December 27, 1988, the petitioners, including the Estate of Anderson Willis, filed a petition with this Court for a Writ of Certiorari to the Court of Appeals for the Fifth Circuit. The petitioners seek review of that court's decision in *Estate of Anderson Willis, et al. v. Estate of John Riley, et al.*, No. 87-1660 (5th Cir. August 25, 1988). This Brief is submitted by the respondent Dow

Chemical Company ("Dow").[1] Dow urges that this Court refuse this petition because this case involves settled law. This Court, if it accepted the writ of certiorari, would merely be reviewing facts amply supported by the record and already determined by two courts. No important legal issues would be addressed.

STATEMENT OF THE CASE

The petitioners seek redress for what they describe as the misappropriation of thousands of acres of land belonging to their long dead ancestor, Anderson Willis. Willis allegedly bought nearly three thousand acres of land in Freestone County, Texas in 1868. From that date until around 1904, various whites in Freestone County allegedly stole land from Willis. None of these wrongdoers are specifically identified, however.

---

1. Dow has the following subsidiaries and affiliate organizations of which it owns less than 100%: Alamo Land Company, Inc.; Arabian Chemical Company; CD Medical, SRL; Compagnie des Services Dowell Schlumberger; DCU/LB TRUST; Cromarty Petroleum Company Limited; Scotdril Offshore Company; Chirntrade; Vorakim Kimya Sanay Ve Ticaret A.S.; Transformadora de Etileno S.A.; MT Partnership; Dowell Schlumberger Canada Inc.; Fort Saskatchewan Ethylene Storage Limited Partnership; H-D Tech, Inc.; Wabiskaw Explorations Ltd.; Chief Shipping Company; Hager and Kaessner Limited; Viopol S.A.; Oronzio de Nora Technologies S.p.A.; Dow Corning Corporation; Dowell Schlumberger Corporation; Dowell Schlumberger Incorporated; El Dorado Terminals Company; Insul/Crete Company, Inc.; ISOPOR - Companhia Portugesa de Isociantos Ltda.; Ivon Watkins-Dow Limited; Joliet Marine Terminal Trust Estate; M.D. Kasei Limited; Funai Pharmaceuticals Company Ltd.; First Chemical Factoring S.p.A.; Laboratories Industriales Farmaceuticos Ecuatorianos (L.I.F.E.); MDP (Holdings) Ltd.; Metal Mark Inc.; Oronzio de Nora Impianti Electrochimici S.A., Lugano; Oronzio de Nora Technologies B.V.; Oronzio de Nora Technologies S.p.A.; P.T. Pacific Chemicals Indonesia; Pacific Chemicals Berhad; Pacific Plastics (Thailand) Limited; Petroquimica-Dow S.A.; Eurosemences, S.A.; Vorakim Kimya Sanayi Ve Ticaret A.S.; Zip Pak Incorporated; The Cynorn Company; Fort Saskatchewan Ethylene Storage Corp.

The petitioners brought suit on June 19, 1984. The petitioners asserted both state law and federal constitutional claims, including claims brought under 42 U.S.C. §§ 1981, 1982, 1983 and 1985(3). Because these causes of action unequivocally arose around or before 1900, the main issue below concerned Texas' two year statute of limitations applicable in federal civil rights cases. To excuse the nearly one hundred year delay in bringing suit, the petitioners primarily claimed that they did not have access to the courthouse (¶ 17 of the Plaintiffs' First Amended Complaint, Appendix F to the Petition for Writ of Certiorari). This, claimed the petitioners, operated to equitably toll the two year statute of limitations.

Tu support this allegation, the petitioners offered that "the [Ku Klux] Klan and their system" barred such access (¶ 66a of the Plaintiffs' First Amended Complaint, Appendix F to the Petition for Writ of Certiorari). Also, they claimed that they were never successful in obtaining an attorney "who recognized the nature of their claim" (¶ 68 of the Plaintiffs' First Amended Original Complaint, Appendix F to the Petition for Writ of Certiorari).

However, the petitioners never presented any specific proof of this. Moreover, as the courts below recognized, their own Complaint conceded that any judicial access problems were alleviated after 1968 (¶ 44A of the Plaintiffs' First Amended Complaint, Appendix F to the Petition for Writ of Certiorari). Because the petitioners could not excuse their nearly one century delay in filing suit, the district court granted summary judgment in favor of the respondents. The district court also found that the respondents did not cause any of the alleged deprivations, and so granted judgment on that ground also. The Court of Appeals for the Fifth Circuit in a *per curiam* opinion

affirmed the district court's statute of limitations holding. The appellate opinion was not published, since the court found the law and the facts of the case to be well settled. The petitioners, however, still continue to press their claims.

ARGUMENT

This case concerns a narrow and uncomplicated legal issue: do any facts in the record support the contention that the statute of limitations should be equitably tolled for approximately one hundred years. The court below applied mostly undisputed facts to the law of equitable tolling, and found the petitioners' claims were extinguished at the latest in 1970, fourteen years before this suit was filed.

This case, therefore, does not present a disputed legal issue. The petitioners do not quarrel with the courts' analysis of equitable tolling principles under Texas law. Nor do the petitioners dispute the constitutionality of the particular statute of limitations applied in this case. Rather, the petitioners merely attack the propriety of granting summary judgment (*see* the Petition for Writ of Certiorari at pp. 13, 16, 19, and 20).

The petitioners' difference of opinion with the courts below about the facts does not provide a reason for granting certiorari. This Court has oft repeated that "[w]e do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnson,* 268 U.S. 220, 227 (1925); *see also General Talking Pictures Corp. v. Western Electric Co.,* 304 U.S. 175, 178 (1938). Certiorari here, therefore, should be accordingly denied.

Besides their primary difference with the lower courts over the resolution of the factual record, the petitioners also argue that a significant issue of federal law exists. In so arguing, however, the petitioners obscure the only legal issue presented in this case: whether the statute of limitations should be tolled. While the petitioners' substantive claims would have had some importance if pursued in 1870 or 1900 or perhaps even in 1965, the substantive claims are not at issue here.

Nor does it aid the petitioners' argument to cite *Hohri v. United States,* ____U.S.____, 107 S.Ct. 2246 (1987). This Court, in granting certiorari in that case, did so primarily because "of the importance of the jurisdictional question . . .". *Id.* at 2249. Presumably, this Court therefore did not intend to reach the statute of limitations issue presented in that case.

In any event, the District of Columbia Circuit's opinion makes clear that the court decided the statute of limitations issue based on that case's unique facts. *Hohri v. United States,* 782 F.2d 227 (D.C. Cir. 1986). Indeed, the court described the facts there as "*sui generis.*" *Id.* at 249. After analyzing those facts, the court held the plaintiffs' Takings Clause claim was tolled. *Id.* at 253. However, the court also held that the plaintiffs' contract claims were not so tolled. *Id.* at 254.

These were close factual determinations as evidenced by the conflicting rulings on the limitations issue. Thus, the district court had ruled that the limitations period was not tolled for any of the plaintiffs' claims. *Hohri v. United States,* 586 F. Supp. 769 (D.D.C. 1984). While the majority in the court of appeals held that only the Takings

Clause claim was tolled, 782 F.2d 227, 253, the dissent would have rejected even that argument. 782 F.2d 227, 260-262 (Markey, C.J., dissenting). Five judges of the District of Columbia Circuit then disagreed with the majority's opinion when considering the plaintiffs' petition for rehearing *en banc*. *Hohri v. United States,* 793 F.2d 304, 304-313 (D.C. Cir. 1986) (Bork, J., dissenting from denial of petition for rehearing *en banc*).

Here and by marked contrast, the Fifth Circuit in a *per curiam* and unpublished opinion affirmed the district court's factual findings. Therefore, unlike in *Hohri* this Court would not only be reviewing a narrow factual issue, but a clear cut factual issue as well. Such a review would illuminate no important question of federal law.

A final reason supports the conclusion that certiorari should not be granted in this case. If this court were to reexamine the factual findings undergirding the lower courts' statute of limitations ruling, thousands of stale claims would be resucitated. Decades old disputes would flood the courts. To successfully argue for tolling limitation periods, the claimants in those cases would need only vaguely allege that fear and ignorance impaired their ability to sue.

Such a result would create profound confusion. The result would also run counter to this Court's precedence which requires that parties claiming equitable estoppel specifically plead how the concealment was effected and how the concealment came to an end. *Wood v. Carpenter,* 101 U.S. (11 Otto) 135, 140 (1879). "A general allegation of ignorance at one time and of knowledge at another are of no effect." *Id.*

Such a result would also effectively gut the policy of repose inherent in statutes of limitations. This result especially should not be countenanced for "every government is under obligation to its citizens to afford them all needful legal remedies; but it is not bound to keep its courts open indefinitely for one who neglects or refuses to apply for redress until it may fairly be presumed that the means by which the other party might disprove his claim are lost in a lapse of time." *Wilson v. Iseminger,* 185 U.S. 55, 62 (1902).

CONCLUSION

For all the above reasons, the respondent Dow respectfully requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

CHRISTOPHER E. HOWE
A. L. DENT III*

FULBRIGHT & JAWORSKI
1301 McKinney Street
Houston, Texas 77010
(713) 651-5151

Attorneys for the Respondent Dow Chemical Company

* Counsel of Record

Date: January 27, 1989

CERTIFICATE OF SERVICE

I, A. L. Dent III, Counsel of Record for Dow Chemical Company, do hereby certify that pursuant to Rules 28.3 and 28.5(b) of the Rules of the Supreme Court of the United States, true and correct copies of the foregoing Brief in Opposition were served upon the following individuals on this the 27th day of January, 1989, by placing same in the United States mail, certified, return receipt requested, postage prepaid.

Mr. Donald W. Hill
Hill, Hicks, Collins
One Main Place
1201 Main Street, Suite 1530
Dallas, Texas 75250

Mr. Frank D. McCown
Fort Worth Club Tower
Penthouse I. Suite A
Fort Worth, Texas 76102-4971

Mr. Herbert S. Bristow
Haley, Davis, Wren, Bristow
& Rasner, P.C.
310 United Bank Plaza
Waco, Texas 76710

Mr. W. A. Keils
Keils & Fulcher
P. O. Box 600
Teague, Texas 75860

A. L. DENT III

Supreme Court, U.S.
FILED
JAN 27 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1085

(3)

In The

Supreme Court of the United States

October Term, 1988

ESTATE OF ANDERSON WILLIS, ET AL.,

Petitioners,

v.

ESTATE OF JOHN RILEY, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

HERBERT S. BRISTOW
United Bank Plaza, Suite 300
510 North Valley Mills Drive
Waco, Texas 76710
(817) 776-3336

Attorney for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

22 pp

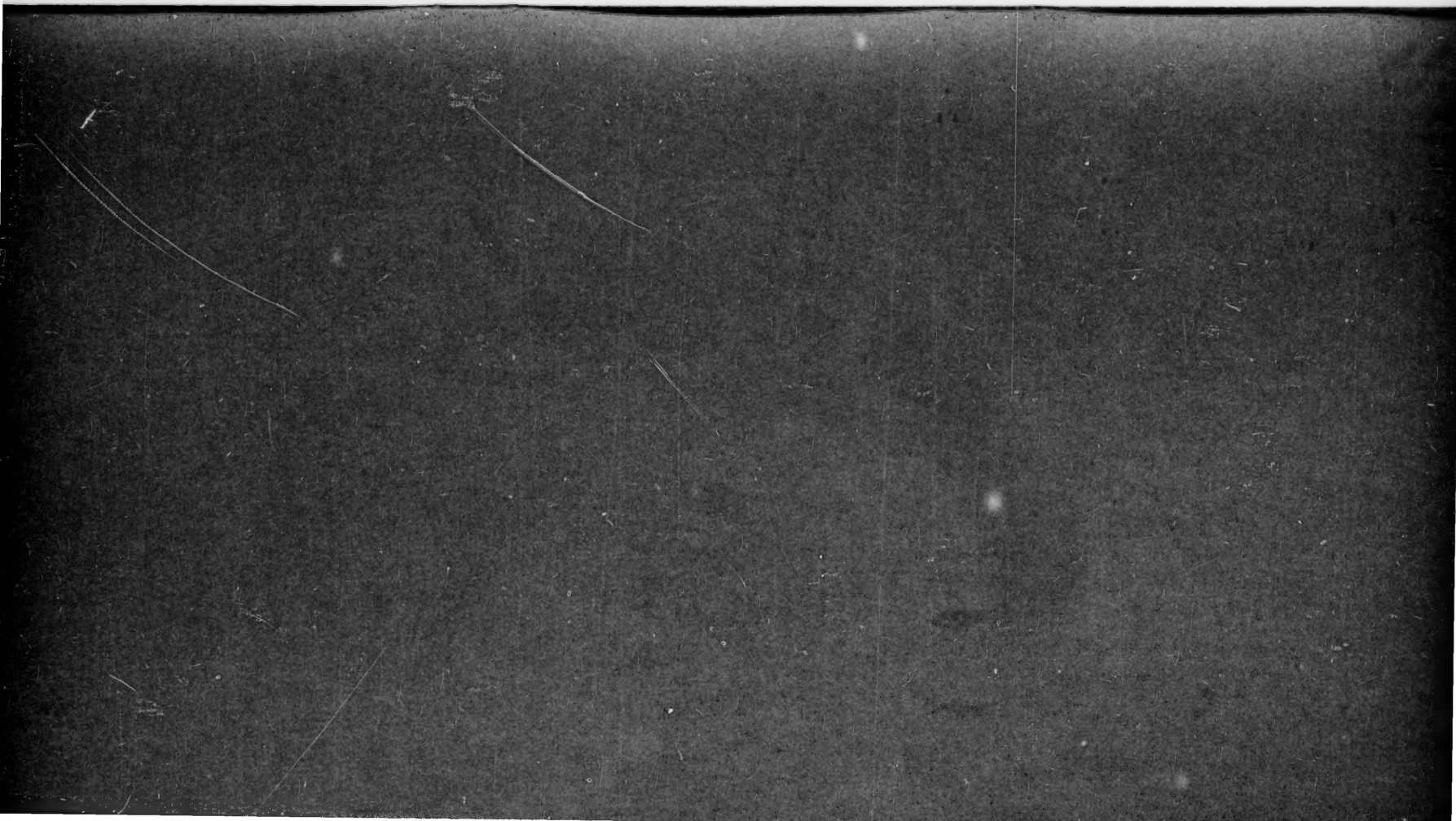


TABLE OF CONTENTS

Page

LIST OF AUTHORITIES ii

OPPOSITION POINT ONE 2

STATEMENT OF FACTS AND HISTORY OF THE CASE 2

RESTATEMENT AND OPPOSITION POINT ONE

A. *Dismissal Under Federal Rule of Civil Procedure 12(b)(6) was Proper Because the Claim was Barred by the Applicable Statute of Limitations* 5

B. *Dismissal of the Case Under Rule 12(b)(6) was Proper Because the Claim Failed to State a Cause of Action Against Any of the Defendants* 15

C. *Based Upon the Foregoing, the Decision of the Fifth Circuit in this Case Does Not Warrant Review by This Court Through the Plaintiffs' Petition for Writ of Certiorari* 16

CONCLUSION 17

INDEX OF AUTHORITIES

Page

CASES

Board of Regents v. Tomanio, 446 U.S. 478, 64 L. Ed. 2d 440 (1980) 6, 10

Borderlon v. Peck, 661 S.W.2d 907 (Tex. 1983) 11

Cross v. Lucius, 713 F.2d 153 (5th Cir. 1983) 10, 12, 13, 16

Hohri v. United States, 586 F. Supp. 769 (D.D.C. 1984) 14, 15

Hohri v. United States, 847 F.2d 779 (Fed. Cir. 1988) 15

Lavellee v. Listi, 611 F.2d 1129, 52 A.L.R.Fed. 773 (5th Cir. 1980) 8

Leeds v. Cooley, 702 S.W.2d 213 (Tex. App.-- Houston [1st Dist.] 1985, no writ) 10

Longoria v. City of Bay City, 779 F.2d 1136 (5th Cir. 1986) 7, 8

Monell v. Department of Social Services, 436 U.S. 658, 56 L.Ed.2d 611 (1978) 16

Peter Henderson Oil Co. v. City of Port Arthur, 806 F.2d 1273 (5th Cir. 1987) 7

Thompson v. Barnard, 142 S.W.2d 238 (Tex. Civ. App. 1940), *aff'd*, 138 Tex. 277, 158 S.W.2d 486 (Tex. Comm'n App. 1942, opinion adpt'd) 10

United States v. Hohri, 482 U.S. 64, 96 L.Ed.2d 51 (1987) 13, 14, 15

United States v. Kubrick, 444 U.S. 111, 62 L.Ed.2d 259 (1972) 14

INDEX OF AUTHORITIES–Continued

Page

Wilson v. Garcia, 471 U.S. 261, 85 L. Ed. 2d 254 (1985) 6, 7, 10

STATUTES

42 U.S.C. Sections 1981-1988 ..... 2, 16

Texas Civil Practice & Remedies Code § 16.003 (Vernon 1988) 7, 8

RULES

Federal Rule of Civil Procedure 12(b) 2, 5

Federal Rule of Civil Procedure 56 5

No. 88-1085

In The

Supreme Court of the United States

October Term, 1988

ESTATE OF ANDERSON WILLIS, ET AL.,

Petitioners,

v.

ESTATE OF JOHN RILEY, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Freestone County, the Freestone County Sheriff's Department, Patsy Stroud and Judge Joe Roger Alderman, Defendants/Appellees in the courts below, respectfully submit this Brief in Opposition to the Petition for Writ of Certiorari, and show the Court the following:

OPPOSITION POINT ONE

The petition for Writ of Certiorari should not be granted since the federal court of appeals decision does not raise the type of issues necessary for review by this Court.

FACT STATEMENT

On March 2, 1987, the Plaintiffs (Petitioners herein) amended their complaint to add as defendants Freestone County, Judge Joe Roger Alderman, Patsy Stroud (in her official capacity as Tax Assessor for Freestone County), the Freestone County Sheriff's Department, (all collectively known as the "Freestone County Defendants") and various private landowners of a certain tract of land in Freestone County, Texas. Plaintiffs alleged that their ancestor, Anderson Willis, purchased the particular tract of land back in 1868. The suit was brought under the Civil Rights Act, 42 U.S.C. Sections 1981-1988, and the United States Constitution.

The Defendants filed Motions to Dismiss under Rule 12(b) of the Federal Rules of Civil Procedure, pleading the affirmative defense of limitations and claiming entitlement to dismissal for the plaintiffs' failure to properly allege a cause of action against the particular Defendants.

On August 7, 1987, the district court entered its order dismissing the case for three reasons: 1) the complaint itself affirmatively showed that the claim was barred by limitations under Texas state law; 2) the complaint failed to state a cause against any of the defendants; and 3) the

complaint failed to allege any specific acts of wrongdoing against any of the defendants.

The case was appealed to the Fifth Circuit. On August 25, 1988, in a per curiam decision, the court affirmed the lower court opinion, finding that the case failed to present sufficient facts to justify a tolling of the statute of limitations. The Petition for Rehearing was denied on September 28, 1988.

Plaintiffs' complaint centered around certain allegations of wrongdoing which occurred more than one hundred years ago. The plaintiffs' ancestor, Anderson Willis, purchased a tract of real property located in Freestone County, Texas. Plaintiffs complain that following Willis' acquisition of the land, various unidentified persons committed fraudulent acts which deprived Mr. Willis and his family of portions of the land tract. The acts alleged include:

a) the forgery of certain promissory notes with Mr. Willis as maker; these notes were reduced to judgment sometime later and portions of Mr. Willis' real property were foreclosed upon by sheriff's deed in satisfaction of the judgment.

b) the forgery of a will purporting to be executed by Anderson Willis devising only a portion of the land owned by Anderson Willis to his offspring;

c) the entry of a judgment in a lawsuit concerning a county boundary dispute between Anderson County and Freestone County that allegedly infringed upon the property owned by Anderson Willis;

d) removal of Anderson Willis' name from the tax rolls in Freestone County thereby omitting recordation of his name as owner of the real property in question;

e) the entry of a judgment in a lawsuit concerning the boundary limitations of the so-called "Jose Ygnacio Aguilera" Mexican grant that allegedly infringed upon the property owned by Anderson Willis;

f) invasion and trespass of the family cemetery plot by certain unknown and unnamed individuals.

The foregoing allegations are the most specific acts of wrongdoing set out in the complaint. Plaintiffs never identified any of the particular persons that participated in these wrongful acts. Included in the complaint were several pages of general historical allegations of wrongdoing, prejudice and injustice allegedly committed against Blacks residing in Freestone County, Texas; however, there were no allegations that the many individual Plaintiffs themselves actually suffered any of the alleged wrongs at the hands of any of the named Defendants. The Plaintiffs identified the Ku Klux Klan or a similar group of persons as the main instrumentality in the "systematic" deprivation of their property. The Freestone County Sheriff's Department and the Tax and Deed Records Department of the County were alleged to have "participated directly in this lawlessness," but there was no identification of the individual wrongdoers within the governmental entities.

In general, Plaintiffs asserted that they were unable to bring this lawsuit until the year 1984, although the specific alleged wrongs primarily occurred prior to the turn of the century. In their complaint, Plaintiffs admit

that while Black American citizens generally encountered difficulty in seeking redress through the judicial system, these barriers were substantially overcome during the Civil Rights reform era led by Dr. Martin Luther King in the 1960's.

RESTATEMENT OF OPPOSITION POINT ONE

The petition for Writ of Certiorari should not be granted since the federal court of appeals decision does not raise the type of issues necessary for review by this Court.

ARGUMENT AND AUTHORITIES UNDER OPPOSITION POINT ONE

A. Dismissal Under Federal Rule of Civil Procedure 12(b)(6) was Proper Because the Claim was Barred by the Applicable Statute of Limitations.

The district court dismissed the case under Federal Rule of Civil Procedure 12(b)(6). Under Rule 12(b), a court may determine whether a claim is barred by the applicable statute of limitations unless, under Rule 56, the motion must be converted into one for summary judgment in order for the court to hear evidence outside of the pleadings. Throughout their appeal of this case, Plaintiffs' consistently misconstrue the trial court's decision by arguing that summary judgment was entered and that the court improperly weighed the evidence and judged the credibility of the testimony. In fact, no evidence was presented to the court; the opinion clearly

states that the court considered only the pleadings of the parties and examined the complaint to determine the sufficiency of the allegations. Dismissal occurred because the court found no set of facts, as pleaded in the complaint or explained in the subsequent pleadings, which would entitle the plaintiffs to relief.

1. The Applicable State Statute of Limitations Controls this Case

Each of the lower courts below followed the procedure set forth by this Court in *Wilson v. Garcia* for determining the applicable limitations period for actions brought under the Civil Rights Act. *471 U.S. 261, 85 L.Ed.2d 254.* Since the Act itself contains no limitations provisions, federal courts must look to the analogous state statute to determine if the claim is time-barred. The appropriate state law provision controls unless it is "inconsistent with the federal policy underlying the cause of action under consideration." *Board of Regents v. Tomanio,* 446 U.S. 478, 64 L.Ed.2d 440 (1980). Additionally, state law governs issues of tolling and application of the limitations period. *Wilson,* 471 U.S. at 268-69.

This Court examined the history and legislative intent surrounding the Civil Rights Act of 1871:

> The specific historical catalyst for the Civil Rights Act of 1871 was the campaign of violence and deception in the South, formulated by the Ku Klux Klan, which was denying decent citizens their civil and political rights.

Wilson, 471 U.S. at 276, 85 L. Ed. 2d at 267. No one would deny the historical pattern of discrimination against

Black citizens in our country *at one time*, but for over one hundred years citizens of every race and gender have had a congressionally created judicial redress for acts which operate to violate those citizens' civil rights, whether the perpetrators are private individuals or government actors acting under color of law. Because a violation of the Act is an injury to the individual rights of the victim, Section 1983 claims are characterized as tort claims for personal injuries. *Id.*, 471 U.S. at 279, 85 L. Ed. 2d at 268-69. The personal injury characterization is consistent with the underlying federal policies behind the Civil Rights Act. *Id.*

Section 16.003 of the Texas Civil Practice and Remedies Code sets forth the limitations period applicable to tort claims for personal injuries. The statute provides:

> (a) A person must bring suit for trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer not later than two years after the day the cause of action accrues.

Tex. Civ. Prac. Rem. Code Section 16.003 (Vernon 1988). This statute governs the limitations period for claims under 42 U.S.C. Section 1983. *Peter Henderson Oil Co. v. City of Port Arthur*, 806 F.2d 1273 (5th Cir. 1987); *Longoria v. City of Bay City*, 779 F.2d 1136 (5th Cir. 1986) (citing to old Texas Revised Civil Statute article 5526(1) which is now recodified as Section 16.003 of the Texas Civil Practice and Remedies Code). Accordingly, both the trial court and the Fifth Circuit found that Plaintiffs' suit was

governed by the two year limitations period set out in Section 16.003 of the Code.

2. Federal Law Determines Accrual of the Cause of Action

While state law governs the length of the limitations period, federal law determines the point in time in which the cause of action accrues. *Longoria,* 779 F.2d at 1138. The federal standard holds that a cause of action accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action. *Id. citing Lavellee v. Listi,* 611 F.2d 1129, 52 A.L.R.Fed. 773 (5th Cir. 1980). Essentially, "the limitations period begins to run when the plaintiff either is or should be aware of both the injury and its connection with the alleged acts of the defendant." *Longoria,* 779 F.2d at 1138.

The district court examined the facts as pleaded and found that the plaintiffs (or their ancestors) either knew or had reason to know of the alleged fraudulent land schemes by at least the year 1904 and, in all likelihood, were on notice of the problems as early as the year 1870. Even assuming that the allegations of wrongdoing are true, the complaint itself reveals several identifiable points in time in which Anderson Willis or his immediate family knew or should have known of problems with their land titles and likewise knew or should have known of attempts by other persons to defraud Willis of his property. For example, Plaintiffs allege that certain unknown persons "created fraudulent promissory notes wherein Anderson Willis was the note holder and his children were the debtors." According to the complaint, these notes were negotiated and eventually reduced to

judgment liens on the Willis property. Apparently the foreclosures occurred in 1904 and Plaintiffs admitted that knowledge of the wrong was acquired when the foreclosure was accomplished. Additionally, Plaintiffs allege that Anderson Willis' name was forged on a will purporting to devise only 100 acres of his property to his son, Alec. This wrong was certainly known to the family at the time of Anderson Willis' death. Plaintiffs also allege that certain fraudulent actions resulted in Anderson Willis' name not appearing on the tax rolls until 1881, even though the property was purchased in 1869. Clearly, this particular injury was known by the family no later than the year 1881. Without exception, all of the alleged acts were discovered or should have been discovered decades, if not a century, ago. On these bases, the trial court and the Fifth Circuit concluded that absent some tolling exception, the plaintiffs "should have filed this suit approximately one hundred years ago."

3. State Law Exceptions to Toll the Limitations Period

The courts below found that the plaintiffs presented no facts which would operate to toll the running of limitations nearly one hundred years until the date suit was filed. Plaintiffs argue that they were precluded from bringing suit within the proper period by the acts of various unknown persons who fraudulently concealed the cause of action from the plaintiffs and effectively barred the plaintiffs' access to the court to seek redress for the injuries, once the existence of the claim was known. These allegations fall short of establishing the

essential elements for fraudulent concealment in this case.

As noted above, federal courts examine state law regarding tolling exceptions to the applicable limitations statute. *Wilson*, 471 U.S. at 269; *Tomanio*, 446 U.S. at 487. State tolling provisions are not inconsistent with the policies of Section 1983 claims. *Tomanio*, 446 U.S. at 488; *Cross v. Lucius*, 713 F.2d 153, 158 (5th Cir. 1983).

Under Texas law, in the absence of fraud, a plaintiff's ignorance or inability to learn that a cause of action exists will not prevent the limitations period from running. An exception exists when there has been a relationship of trust and confidence between the parties and the party committing the wrongful act actively undertakes to conceal the wrong. *Thompson v. Barnard*, 142 S.W.2d 238, 241 (Tex. Civ. App. 1940), *aff'd*, 138 Tex. 277, 158 S.W.2d 486 (Tex. Comm'n App. 1942, opinion adpt'd). Fraudulent concealment by the defendant causes the starting point for limitations to shift from the date of the injury to the time the cause of action is discovered or should have been discovered in the exercise of reasonable diligence. *Leeds v. Cooley*, 702 S.W.2d 213 (Tex. App. – Houston [1st Dist.] 1985, no writ); *Borderlon v. Peck*, 661 S.W.2d 907 (Tex. 1983). In order for the doctrine to apply, the defendant himself must have actual knowledge that the wrong occurred and there must be fixed purpose to conceal the wrong. *Leeds*, 702 S.W.2d at 215. Implicit within the doctrine is the idea that the defendant both committed the wrongful act and that he actively and purposefully concealed the wrong. The estoppel effect of the doctrine

ceases "when a party learns of facts, conditions or circumstances which would cause a reasonably prudent person to make inquiry that, if pursued, would lead to discovery of the concealed cause of action." *Borderlon*, 661 S.W.2d at 907.

None of the essential elements for fraudulent concealment exist in this case. Plaintiffs never identified any kind of "special relationship of confidence and reliance" existing between them and any of the defendants that would give rise to a duty to disclose. More importantly, there were no allegations that the particular defendants to this suit participated in an injury to the plaintiffs or that any defendant had actual knowledge of a wrong committed which was actively concealed. Plaintiffs never identified a single instance where any named defendant sought to conceal information from the plaintiffs. Finally, the plaintiffs admitted in their complaint that they knew of their injury at some point in time subsequent to the alleged events; that knowledge, as the trial court noted, was gained some one hundred years ago.

Apparently in addition to the argument of fraudulent concealment, Plaintiffs urge that some type of equitable tolling of the statute should be applied in this case. Plaintiffs point to the historical facts of the social system facing Blacks in this country after the Civil War, but they never particularized their complaints as to themselves and their ancestors. Allegations of generalized historical trends cannot operate to allow these particular individuals the right to an equitable tolling of the statute. Moreover, Plaintiffs themselves conceded in their pleadings that during the Civil Rights Era of the 1960's, Black

Americans in general became cognizant of their rights to examine public records and seek the protection of their civil rights through the judicial system. Thus, the district court and the Fifth Circuit concurred that any equitable tolling of the statute, even if this case merited such a tolling, ended sometime during the Civil Rights Era.

Plaintiffs never advanced any explanation in their pleadings as to why the limitations period should be tolled until June 19, 1982, the date two years prior to the filing of their lawsuit. The trial court and the Fifth Circuit concluded that no set of facts could exist which would toll the running of the statute until the year 1982.

4. The Fifth Circuit Case of *Cross v. Lucius*

Both the trial court and the Fifth Circuit noted that the plaintiff's case was closely analogous to the previous Fifth Circuit opinion in *Cross v. Lucius*, 713 F.2d 153 (5th Cir. 1983). In *Cross*, the plaintiffs complained of events that occurred in the 1920's, allegedly depriving the plaintiffs' family member of real property located in the state of Louisiana. The Fifth Circuit reviewed the dismissal on the basis of the limitations defense raised by the defendants. After examining the appropriate Louisiana state limitations provisions, the analysis turned to the plaintiffs' argument that the limitations period should be tolled because existing prejudice and racism kept them from obtaining the financial backing and legal representation needed to bring the suit. *713 F.2d at 157*. The court analyzed the Louisiana estoppel doctrine (analogous in effect to the Texas fraudulent concealment doctrine), and noted:

> Even if the plaintiffs' allegations that they could not have obtained legal representation during the earlier part of this century because no lawyer would represent a black person in a suit against a white person are true, the plaintiffs conceded at oral argument that this situation had improved by the 1960s, perhaps as a result of the upsurge in civil rights litigation during that period. The plaintiffs still delayed twenty years from that time until they brought this action.

713 F.2d at 158.

Plaintiffs have tried throughout the course of litigation to distinguish their situation from that of the plaintiffs in *Cross;* however, as in the prior case, the Willis descendants in fact: a) failed to adequately allege that any defendant prevented the plaintiffs from pursuing their claim or kept them in ignorance of their cause of action; b) failed to show that any legal barrier kept them from bringing this action earlier than June 19, 1984; and c) failed to show that plaintiffs exercised diligence in trying to pursue the claims in the court system. *713 F.2d at 158.* No effort was ever made to articulate *any* explanation for the fact that Plaintiffs waited until the year 1984 until attempting to bring this suit. As the Fifth Circuit noted, in the absence of specific factual allegations related directly to the Willis family and their particular situation regarding access to the courts, Plaintiffs failed to present a set of facts that would justify tolling the statute of limitations for nearly one hundred years until the date suit was finally filed.

5. *Hohri v. United States*

Plaintiffs assert in their Petition to this Court that the lower courts' decisions are in opposition to this Court's

position in *United States v. Hohri*, 482 U.S. 64, 96 L.Ed.2d 51 (1987). The opinion of this Court in *Hohri* reflects that judgment was entered concerning the issue of jurisdiction only and the Court did not address the merits of the decision of the Court of Appeals (including the limitations issue). Plaintiffs attempt to read into the opinion tacit approval by this Court that the claims addressed in *Hohri* were not barred by limitations due to an equitable tolling argument.

The subsequent history of the *Hohri* case after remand is instructive. The district court for the District of Columbia dismissed the case under Rule 12(b)(1), based upon the plea of the defendant, the United States, that the claim was barred by the applicable statute of limitations. *Hohri v. United States*, 586 F. Supp. 769 (D.D.C. 1984). Judge Oberdorfer noted the following regarding the limitations statute:

> The length of a statute of limitations is a product of a legislative weighing of competing claims of fairness – the need of the plaintiffs for a reasonable amount of time within which to present their claims, and the right of defendants to be free of stale claims. Statutes of limitations also protect both the Court and the defendant from cases where the loss of evidence – by death or disappearance of witnesses, fading memories, or disappearance of documents – may frustrate the search for truth.

586 F.Supp. at 785, citing, United States v. Kubrick, 444 U.S. 111, 117, 62 L.Ed.2d 259 (1972). The district court concluded that in *Hohri*, as in the present case, the statute of limitations ran long before the suit was filed. *586 F. Supp. at 785.*

The *Hohri* plaintiffs further argued that even if the claim was facially barred by the limitations statute, the statute was in fact tolled because of fraudulent concealment. In answer to this claim, the district court reviewed the historical background of the claim to determine at what point in time the plaintiffs, through due diligence, could have discovered the existence of their claim. *586 F. Supp. 787-90.* The court noted that once a plaintiff is on inquiry that has a potential claim, the statute begins to run. *Id. at 790-91.* The court also rejected the plaintiffs' further argument that certain "aggravating factors" existed which should be weighed in judging the plaintiff's due diligence in discovering his claim. *Id.*

The United States Court of Appeals for the Federal Circuit affirmed Judge Oberdorfer's decision that the claims were barred by the statute of limitations. *Hohri v. United States,* 847 F.2d 779 (Fed. Cir. 1988). This Court denied the petition for Writ of Certiorari on October 31, 1988. ___ *U.S.* ___, *109 S.Ct. 307 (1988).* In light of the subsequent history of *Hohri,* the Fifth Circuit's decision in this case is, in fact, in complete agreement with the *Hohri* case.

B. Dismissal of the Case Under Rule 12(b)(6) was Proper Because the Claim Failed to State a Cause of Action Against Any of the Defendants

The trial court dismissed the claim not only because suit was barred by the statute of limitations, but also because the complaint failed to assert that any named defendant actually violated the federally protected rights of any of the plaintiffs. The language of the Civil Rights Act is clear; suit may only be maintained against those

persons who actually violated the rights of the Plaintiff. For example, Section 1983 does not provide for liability under the theory of respondeat superior; only those persons or entities directly involved in the wrongdoing are liable under the Act. *Monell v. Department of Social Services*, 436 U.S. 658, 56 L.Ed.2d 611 (1978); *Cross*, 713 F.2d at 159 (Clark, J., concurring).

The plaintiffs' generalized claims of wrongdoing extend to certain unnamed, unknown individuals who lived decades ago, as well as to the unknown members of the Ku Klux Klan, and certain unknown public officials living at or near the time of Anderson Willis. Nowhere is there a single factual complaint against Judge Alderman, any identified members of the Freestone County Sheriff's Department, or any other Freestone County officials. Plaintiffs complained of a certain alleged incident between Patsy Stroud and Jeannette Willis Atkins; that incident, if it occurred, occurred subsequent to the filing of the present lawsuit.

The complaint clearly failed to allege any specific factual allegation against any of the Freestone County Defendants which would support a judgment for the Plaintiffs under 42 U.S.C. Section 1983.

C. Based Upon the Foregoing, the Decision of the Fifth Circuit in This Case Does Not Warrant Review by This Court Through the Plaintiffs' Petition for Writ of Certiorari

The trial court concluded that the Plaintiffs' suit should be dismissed because the pleadings affirmatively showed that the claim was barred by the statute of limitations and that the complaint failed to state a cause of

action against the particular defendants. The Fifth Circuit affirmed, finding that this particular set of facts did not justify tolling the statute of limitations. No unique or important federal question is presented by the Plaintiffs' case. This Court has previously affirmed that state limitations statutes and tolling procedures are not inconsistent with the policies behind the Civil Rights Act; having followed this Court's directions in ascertaining the appropriate limitations period, the lower courts' decisions were proper. Since the Fifth Circuit's opinion does not conflict with any previous opinions of another circuit or of this Court on the same matters, and since no important question of federal law is presented by the decision, the petition for writ of certiorari should be denied.

CONCLUSION

For all of the reasons set out above, this Court is respectfully requested to deny the Petition for Writ of Certiorari filed by the Plaintiffs.

Respectfully submitted,

HALEY, DAVIS, WREN,
BRISTOW & RASNER, P.C.

HERBERT S. BRISTOW
Attorney for Respondents
United Bank Plaza, Suite 300
510 North Valley Mills Drive
Waco, Texas 76710
(817) 776-3336